

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

4 - - - - - x

5 In the Matter of:

6

7 CELSIUS NETWORK, LLC,
8 Debtor.

9 - - - - - x

10 Adv. Case No. 22-01139-mg

11 - - - - - x

12 CELSIUS NETWORK LIMITED et al.,
13 Plaintiff,

14 v.

15 STONE et al.,
16 Defendants.

17 - - - - - x

18 Adv. Case No. 22-01179-mg

19 - - - - - x

20 FRISHBERG,
21 Plaintiff,

22 v.

23 CELSIUS NETWORK LLC et al.,
24 Defendants.

25 - - - - - x

1 Adv. Case No. 22-01190-mg

2 - - - - - x

3 SHANKS,

4 Plaintiff,

5 v.

6 CELSIUS NETWORK LLC, et al.,

7 Defendants.

8 - - - - - x

9

10 United States Bankruptcy Court

11 One Bowling Green

12 New York, NY 10004

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14 February 15, 2023

15 10:14 AM

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21 B E F O R E :

22 HON MARTIN GLENN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: KS

1 HEARING re Final Hearing Using Zoom for Government RE: (I)
2 Authorizing the GK8 Debtors to (A) Continue to Operate the
3 GK8 Cash Management System, (B) Honor Certain Prepetition
4 Obligations Related Thereto, (C) Maintain Existing GK8
5 Business Forms, and (D) Continue to Perform GK8 Intercompany
6 Transactions, (II) Granting Superpriority Administrative
7 Expense Status to Postpetition GK8 Intercompany Balances,
8 and (III) Granting Related Relief (Related Doc ## 1627,
9 1653, 1784, 1902, 1912, 1917, 1930, 2002, 2021, 2048).

10

11 HEARING re Debtor's Motion Seeking Entry of an Order (I)
12 Authorizing (A) the Sale of Bitmain Coupons and (B) the
13 Conversion of Bitmain Credits Into Mining Rigs and
14 Assignment of Rights in Such Mining Rigs, and (II) Granting
15 Related Relief. (Doc# 2022 to 2024, 2026)

16

17 HEARING re Debtors Motion for an Order (I) Approving (A)
18 Omnibus Claims Objection Procedures and Form of Notice, (B)
19 Omnibus Substantive Claims Objections, and (C) Satisfaction
20 Procedures and Form of Notice and (II) Modifying Bankruptcy
21 Rule 3007(e)(6). (Doc# 1972, 2040)

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1 HEARING re Second Motion to Extend Exclusivity Period for
2 Filing a Chapter 11 Plan and Disclosure Statement. (Doc##
3 1940, 1996, 2008, 2010, 2011, 2013 to 2015, 2038, 2043,
4 1645, 2043, 2046, 2047, 2048, 2052, 2058)

5

6 HEARING re Status Conference Using Zoom for Government RE:
7 Motion to Appoint a Chapter 11 Trustee. (Doc # 1975, 2018,
8 2020, 2034 to 2036, 2043, 2046, 2047, 2051, 2052, 2057)

9

10 HEARING re Motion for Order to Show Cause Why the Debtors
11 Should not Retain Willis Towers Watson.
12 (Doc## 2042 to 2044, 1392)

13

14 HEARING re Status Conference on the Custody Phase II
15 litigation held using Zoom for Government.
16 (Doc # 2025, 2039)

17

18 HEARING re Adversary proceeding: 22-01139-mg Celsius Network
19 Limited et al v. Stone et al
20 Case Management Conference Using Zoom for Government.
21 (Doc ## 20 to 22, 24 to 27, 32 to 34, 42 to 45, 51, 65, 66,
22 70, 74, 75)

23

24

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1 HEARING re Adversary proceeding: 22-01179-mg Frishberg v.
2 Celsius Network LLC et al
3 Pretrial Conference Using Zoom for Government.
4 (Doc ## 1 to 7)

5
6 HEARING re Adversary proceeding: 22-01190-mg Shanks v.
7 Celsius Network LLC, ET AL et al
8 Pretrial Conference Using Zoom for Government.
9 (Doc ## 1, 3, 8, 9 to 11)

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21

22

23

24

25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2

3 KIRKLAND & ELLIS LLP

4 Attorneys for the Debtor

5 300 N. LaSalle

6 Chicago, IL 60654

7

8 BY: ROSS M. KWASTENIET

9 CHRIS KOENIG

10 DAN LATONA

11

12 KIRKLAND & ELLIS LLP

13 Attorneys for the Debtor

14 601 Lexington Avenue

15 New York, NY 10022

16

17 BY: ELIZABETH JONES

18

19 WILLKIE FARR GALLAGHER LLP

20 Attorneys for Global X Digital

21 787 Seventh Avenue

22 New York, NY 10019

23

24 BY: BRIAN S. LENNON

25

1 MILBANK LLP

2 Attorneys for Series B Preferred Holders

3 1850 K Street NW

4 Washington, DC, DC 20006

5
6 BY: ANDREW LEBLANC

7
8 UNITED STATES DEPARTMENT OF JUSTICE

9 Attorneys for the U.S. Trustee

10 1 Bowling Green

11 New York, NY 10004

12
13 BY: SHARA CLAIRE CORNELL

14
15 WHITE & CASE LLP

16 Attorneys for Official Committee of Unsecured Creditors

17 1221 Avenue of the Americas

18 New York, NY 10036

19
20 BY: KEITH WOFFORD

1 TROUTMAN PEPPER HAMILTON SANDERS LLP

2 Attorneys for Ad Hoc Group of Withhold Account Holders

3 4000 Town Center, Suite 1800

4 Southfield, MI 48075

5
6 BY: DEBORAH KOVSKY-APAP

7
8 NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

9 Attorneys for States

10 1850 M St NW, 12th Floor

11 Washington, DC, 20036

12
13 BY: KAREN CORDRY

14
15 STATE OF VERMONT

16 Attorneys for Department of Financial Regulation

17 89 Main Street, Third Floor

18 Montpelier, VT 05620

19
20 BY: JENNIFER ROOD

21
22 JASON IOVINE

23 Pro Se Creditor

24 2206 Woodmont Circle

25 Sewell, NJ 08080

1 EZRA SERRUR

2 Pro Se Creditor

3

4 DANIEL A. FRISHBERG

5 Plaintiff

6

7 LUCY THOMSON

8 Pro Se Creditor

9

10 KULPREET KHANUJA

11 Pro Se Creditor

12

13 VICTOR UBIERNA DE LAS HERAS

14 Pro Se Creditor

15

16 ALSO PRESENT TELEPHONICALLY:

17

18 ARTUR ABREU

19 DAVID J. ADLER

20 YOHANNES AFEWORK

21 KATHERINE AIZPURU

22 NELLY ALMEIDA

23 RENE AMAYA

24 ALISON R. AMBEAULT

25 RICK ARCHER

1 PETER ARONOFF
2 BRIAN BARNES
3 CHRIS BECIN
4 JEFFREY BERNSTEIN
5 EDWARD G. BIRCH
6 OCTAVE J. BOURGEOIS
7 JOHAN BRONGE
8 MARK BRUH
9 JOHN BUZOLITS
10 ROB CHRISTIANSEN
11 STEVEN CHURCH
12 MARVIN E. CLEMENTS
13 CHRISTOPHER COCO
14 SONDRRA CORI COHEN
15 AARON COLODNY
16 MICHAEL CONLON
17 CARL J. COTE
18 CAMERON CREWS
19 CHRIS CRO
20 THOMAS DIFIORE
21 TRISTAN LUIS DIAZ
22 SCOTT DUFFY
23 DENNIS DUNNE
24 SIMON ELIMELECH
25 DANIEL EGGERMANN

1 JAMES ENGEL
2 CHRISTOPHER FAY
3 DAVID AVERY FAHEY
4 CHRIS FERRARO
5 FORREST L. FORMSMA
6 DEBORAH FRANKEL
7 ARLISHEA FULTON
8 REBECCA GALLAGHER
9 CHRISTOPHER GASTELU
10 BRADLEY GIARDIELLO
11 VINCENT GOETTEN
12 JASON GOLDWATER
13 RANIB GONZALES
14 TAMMY L. GROVER
15 ANNE HART
16 IMMANUEL HERRMANN
17 SAMUEL P. HERSHEY
18 JOHN HODSON
19 LUCAS HOLCOMB
20 JANKO JANKOVIC
21 TIM JOHNSON
22 GREG KACZKOWSKI
23 JOEL KAISER
24 DAN D. KAPLAN
25 KULPREET KHANUJA

1 GREGORY A. KIESER
2 BRYAN KOTLIAR
3 ROSS M. KWASTENIET
4 JOSEPH LAILA
5 DAN LATONA
6 CATHY LAU
7 VINCENT EDWARD LAZAR
8 ANDREW LEBLANC
9 NICOLE A. LEONARD
10 OLEKSANDR LEONENKO
11 CHEYENNE LIGON
12 JESSE LUND
13 SARAH BETH MARONPOT
14 CHASE MARSH
15 BRIAN S. MASUMOTO
16 CAROL MAUNDER
17 KYLE MCKUHEN
18 JOSHUA MESTER
19 LAYLA MILLIGAN
20 LUCIAN MURLEY
21 PATRICK JAMES NASH
22 KEITH NOYES
23 L.A. O'CONNOR
24 ALEX ONO
25 KYLE J. ORTIZ

1 LAWRENCE C. PORTER
2 CHRISTOPHER PAGNANELLI
3 SIDDHARTH PANDEY
4 SHAWN P. PARPART
5 BRETT PERRY
6 GREGORY F. PESCE
7 RICHARD PHILLIPS
8 SHOBA PILLAY
9 EVAN RAHEY
10 JOHN P. REDING
11 ANNEMARIE V. REILLY
12 LINDA RIFFKIN
13 MARK ROBINSON
14 ABIGAIL RYAN
15 DAVID RYAN
16 ROBERT D. RYAN
17 ARACELI SANCHEZ
18 DANA SANDEFUR
19 DAVID SCHNEIDER
20 NOAH M. SCHOTTENSTEIN
21 WILLIAM D. SCHROEDER
22 JOSHUA M. SEDORE
23 NAJEEB SIDDIQUI
24 CALIN THOMAS ST. HENRY
25 PAUL STAPLETON

1 CATHERINE STEEGE

2 NIKHIL SURI

3 DAVID TURETSKY

4 EZRA VAZQUEZ-D'AMICO

5 TONY VEJSELI

6 CAROLINE WARREN

7 CARL N. WEDOFF

8 MELANIE WESTOVER YANEZ

9 BENNY WONG

10 MER FARUK YAZ

11 ANNE YEILDING

12 ANDREW YOON

13 JEFFREY ZATS

14 KEN ZIMAN

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1 P R O C E E D I N G S

2 THE COURT: Good morning, everybody. This is
3 Judge Glenn. We have a long agenda for today. Who's going
4 to begin for the Debtor?

5 MR. KWASTENIET: Good morning, Your Honor. It's
6 Ross Kwasteniet from Kirkland and Ellis. Can you see me --

7 THE COURT: Yes.

8 MR. KWASTENIET: -- and hear me okay this morning?

9 THE COURT: I can see you and hear you well.
10 Thank you. Go ahead.

11 MR. KWASTENIET: Great. Thank you, Your Honor.
12 As has become our custom, we propose to begin with a brief
13 business update. We're joined on the line today by the
14 Debtor's CEO Mr. Christopher Ferraro. So if it's all right
15 with Your Honor, I'd ask Mr. Ferraro to update on a few
16 points relevant to the business since our last update.

17 THE COURT: Thank you. Go ahead, Mr. Ferraro.

18 MR. KWASTENIET: Okay. Mr. Ferraro, do you mind
19 just starting this morning with a brief update on the status
20 of the company's mining operations?

21 MR. FERRARO: Yeah. Good morning, Your Honor.
22 Overall, we are mining between seven to eight Bitcoin per
23 day. The recent upturn at our sites has been around 75
24 percent. With the price of Bitcoin at current levels, our
25 margin in EBITA have rebounded nicely since December. In

1 January we had a margin of around 30 percent and an EBITA of
2 approximately one million. We are currently mining at a
3 margin of around 25 percent. It should have approximately
4 750,000 of EBITA in February holding Bitcoin prices flat to
5 today. We also recently entered into a contract to host
6 approximately 7,000 machines. We are currently preparing to
7 move the rigs to this locations and expect the 17,000 rigs
8 to be online and hashing by the end of March with margins
9 also around 25 percent at current market levels.

10 We are continuing the work to recover all of our
11 37,500 rigs from Core Scientific. Overall, we are confident
12 that all the rigs will leave the Core sites by mid-March.
13 To date, we have moved nearly 6,000 rigs to our East Style
14 site in Texas with another 4,400 arriving in the next two
15 weeks. Approximately 11,500 rigs are set for temporary
16 storage as we look for new hosting opportunities. And we
17 are in advanced discussions with another party to host
18 nearly 15,000 additional rigs. We expect that all the rigs
19 previously at Core will be hashing in the second quarter.

20 Additionally, we extended our liquidity runway
21 through the sale of certain rigs generating approximately
22 1.3 million. We are not expecting any further rig sales.
23 We also sold one traunch of Bitmain coupons for 2.7 million.
24 Pursuant to our -- this was done pursuant to our de minimis
25 asset sale procedures. The collective 4 million will

1 support our cash needs as we finalize the proprietary mining
2 sites and deploy assets through new third-party hosting
3 contracts.

4 MR. KWASTENIET: Okay. Thank you, Mr. Ferraro.
5 The Debtors also recently filed a notice at Docket Number
6 1958 regarding certain custody users who are entitled to an
7 immediate return of funds. Can you give us an update on the
8 Debtor's efforts to return assets to these custody holders?

9 MR. FERRARO: Yeah. Absolutely. Thanks, Ross.
10 On January 31st, the court authorized Celsius to permit
11 certain customers specified in the distribution schedule to
12 withdraw digital assets from the custody program. As a
13 reminder, Celsius is authorized to distribute 94 percent of
14 each eligible user's custody assets less transaction fees.
15 This morning we began to notify over 22,000 eligible users
16 through email of the necessary steps to facilitate
17 withdrawals, including reverifying their identity and
18 information regarding the destination address.

19 Eligible users will also receive an in-app
20 notification to follow these steps. In the coming days we
21 expect that eligible customers will be able to initiate the
22 withdrawal process. We anticipate to receive a high number
23 of requests and are committed to ensuring accurate and safe
24 withdrawals off the platform. Overall, we will do
25 everything we can to make sure the requests are processed

1 quickly.

2 THE COURT: May I ask you --

3 MR. KWASTENIET: Thank you.

4 THE COURT: May I ask you this, Mr. Ferraro? So I
5 have ECF 1958 open on my screen, and I want to make sure I
6 understand the fees that are charged. I see that for
7 Bitcoin it has both a variable fee and then the total
8 withdrawal fee. And for Bitcoin, the total withdrawal fee
9 is \$2.25. Explain how that works, if you would.

10 MR. FERRARO: So for each transaction in Bitcoin
11 there will be a reduction of the net withdrawal for the gas
12 fees, which --

13 THE COURT: Let me just assume that someone has 10
14 Bitcoin that they're entitled to withdraw. What's the total
15 charge that will apply to them?

16 MR. FERRARO: Yeah. My understanding, and I don't
17 have the numbers in front of me, Your Honor, will be the
18 \$2.50 that your --

19 THE COURT: It's 2.25 for Bitcoin. So it doesn't
20 matter how many Bitcoin they're eligible to withdraw. They
21 pay the same \$2.25 for the withdrawal.

22 MR. FERRARO: Yes. That's my understanding, Your
23 Honor.

24 THE COURT: Okay. All right. Thank you. Mr.
25 Kwasteniet, is there anything else you want to raise?

1 MR. KWASTENIET: No, not for Mr. Ferraro, Your
2 Honor. I would just note that the Debtors continue to
3 become aware of phishing scams, and that is an instance
4 where there will be a direct communication from the Debtors
5 to the eligible customers and also a process whereby they
6 can log in and verify through the app itself, which remains
7 our most secure way of communicating with our customers. So
8 this one is legitimate, Your Honor. If you receive the
9 notification and you're able to verify it through the app,
10 we're asking customers to go through the process that we've
11 outlined to reverify their accounts so that we can process
12 the distributions to them.

13 THE COURT: All right. Let me raise -- I think we
14 were advised by your office that in one of the phishing
15 efforts, an order of the court was modified, and it included
16 in whatever the phishing effort. I haven't seen the actual
17 phishing effort. If we find out -- if the Court finds out
18 who was involved in that, I believe that in copying or
19 modifying a court order, it's a felony. And I assure you
20 that I will do everything I can to get the U.S. Attorney's
21 Office to prosecute any instance of anyone modifying,
22 tampering with an order of this court. So I assure you that
23 efforts are underway to identify who is responsible for
24 what's happened so far. It will be monitored.

25 Ms. Cornell, I see you the screen. The U.S.

1 Trustee I'm sure will also monitor that. I take any
2 phishing episodes to be very serious. And if it involves
3 any effort to mislead about what the Court has ruled, I will
4 do everything I can to make sure whoever's involved is
5 prosecuted to the fullest extent of the law. Go ahead, Mr.
6 Kwasteniet.

7 MR. KWASTENIET: Thank you, Your Honor. And I
8 would note that we've been in close contact with Ms. Cornell
9 and the U.S. Trustee's Office, and have also reached out to
10 other relevant authorities, including the U.S. Attorney's
11 Office. So it's a situation that we take extremely
12 seriously and are doing everything we can to follow up on
13 it.

14 THE COURT: Thank you.

15 MR. KWASTENIET: Your Honor, that's all I have for
16 Mr. Ferraro, but with Your Honor's permission, I would also
17 propose to start before we get into the rest of the agenda
18 with just a brief case status update for Your Honor and the
19 parties.

20 THE COURT: Please go ahead.

21 MR. KWASTENIET: Thank you, Your Honor. First, I
22 am pleased to report that since were last before you we have
23 reached a settlement with the ad hoc custody group. My
24 colleague Mr. Koenig will provide more details when we get
25 to the custody status conference, which is listed at -- I

1 believe it's Item 9 on today's agenda. But suffice it to
2 say this has been a big focus of ours, and we view it as a
3 very, very positive development for moving these cases
4 forward.

5 Second, Your Honor, the Debtors have entered into
6 a stipulation with the Creditors' Committee regarding
7 assignment of claims against Alex Mashinsky and other former
8 officers and the related entities. This was filed yesterday
9 by the Committee at Docket Number 2054, and I believe that
10 stipulation will be up for our next omnibus hearing. Third,
11 Your Honor, we are in advanced negotiations with the ad hoc
12 committee to borrow --

13 THE COURT: May I just stop you? I haven't seen
14 it. Is it only claims against Mr. Mashinsky or against
15 others as well?

16 MR. KWASTENIET: It's others as well, Your Honor.
17 It's -- the Committee attached a draft complaint to the
18 motion where they identified a number of claims and causes
19 of action Mr. Mashinsky, Mr. Leone, who was a co-founder of
20 Celsius, as well as numerous other former executives, and
21 then various entities that we believe are family trusts and
22 other entities and vehicles associated with those
23 individuals, Your Honor. And we have agreed that those
24 claims identified in that complaint will be assigned to a
25 litigation trust or similar vehicle under our plan.

1 And we've also agreed, Your Honor, to continue to
2 coordinate with the Committee on the identification of any
3 other claims against any other individuals that may be
4 appropriate to also assign to a litigation. We also noted
5 in the stipulation, Your Honor, that it's our intention and
6 expectation that the plan will provide for the funding to
7 complete the investigation of and pursuit of these claims on
8 behalf of the customers.

9 THE COURT: Go ahead.

10 MR. KWASTENIET: Thank you. Your Honor, as I was
11 beginning to note, we are also in advanced negotiations with
12 the ad hoc Committee of borrow customers and are optimistic
13 that we will reach a settlement with the retail loan
14 customers that can be included in the Debtor's Chapter 11
15 plan. Mr. Adler's on the line, and I'm sure that he'll
16 speak for himself when I conclude my remarks, but we are
17 cautiously optimistic and encouraged by the progress that
18 we've made to-date with Mr. Adler and his group.

19 Your Honor, finally after an extensive marketing
20 process that began last year, and after weeks of intensive
21 negotiations, last night at Docket Number 2066 the Debtors
22 filed a summary of their proposed Chapter 11 plan. This
23 transaction was negotiated with and has the support of the
24 Creditors' Committee. And it's a very detailed
25 presentation, and a lot of people contributed to it and

1 reviewed it, so I don't plan to read it go through all of
2 the substance of it today. But I did want to highlight a
3 few key features of the plan construct for Your Honor and
4 for the parties on the line.

5 THE COURT: Why don't you hold off for just a
6 second? I'm going to open it on my -- I'm sorry, what was
7 the number that it was filed under?

8 MR. KWASTENIET: It was 2066 filed shortly after
9 midnight last night, Your Honor.

10 THE COURT: Just give me a second.

11 MR. KWASTENIET: There's a notice and then an
12 approximately 20-page PowerPoint attached to the notice.

13 THE COURT: All right. Go ahead. I have it open
14 on the screen.

15 MR. KWASTENIET: Very good, Your Honor. The first
16 key feature of the plan is that it provides for the
17 immediate return of the vast majority of the Debtor's liquid
18 cryptocurrency assets. As we -- as I indicated at our last
19 hearing on the 24th of January, there will be a convenience
20 class feature wherein customers with claims valued at \$5,000
21 or less will get a one-time distribution of 70 percent of
22 the amount of cryptocurrency they deposited. And this
23 distribution will be in the form of liquid cryptocurrency.

24 Your Honor, we expect that more than 85 percent of
25 the Debtor's total customer base will fall into this

1 convenience class. So meaning 85 percent of our customers
2 we expect will get a 70 percent distribution of liquid
3 cryptocurrency on or shortly after the plan's effective
4 date. Your Honor, large earn customers will also receive a
5 very substantial upfront distribution of liquid
6 cryptocurrency. We're in discussions with the Creditors'
7 Committee about exactly how much we'll be able to distribute
8 and how much needs to stay back for purposes of working
9 capital at the NewCo. But we expect a very substantial
10 distribution of liquid cryptocurrency to the larger earn
11 customers as well.

12 The large earn customers are also going to receive
13 ownership interests in a NewCo, which is the next key
14 feature of the plan that I want to talk about. The second
15 key feature of the plan, Your Honor, is that there will be a
16 professional management of the Debtor's illiquid assets. As
17 I noted at our last hearing, one of the challenges in this
18 case is we have illiquid assets that, after an extensive
19 marketing period, we've determined now is not the right time
20 to simply sell those. We're going to need to hold onto
21 them, manage them, and hopefully deliver a lot more value to
22 customers as market conditions improve.

23 The Debtors and the Committee, after a rigorous
24 process, have selected a digital asset investment and
25 development firm called NovaWulf to manage the Debtors'

1 illiquid assets. NovaWulf was founded by and is led by
2 Jason New, who's formerly of Onyx Capital and Blackstone,
3 and Michael Abbate, formerly of King Street. Jason and Mike
4 have decades of experience managing billions of dollars in
5 assets, and have assembled a world class team. And we are
6 very much looking forward to and excited about Mike and
7 Jason getting out in front of the customer community
8 explaining their background, their vision for the future of
9 the NewCo, and we're confident that customers will be as
10 excited about that future as we and the Committee are.

11 Your Honor, NovaWulf is going to manage a NewCo
12 that will hold the Debtors' illiquid assets, which again
13 include the mining business, the illiquid cryptocurrency,
14 the loan platforms, and other miscellaneous assets. NewCo
15 is going to be owned by the larger earn customers. So in
16 addition to getting a distribution -- a meaningful
17 distribution of liquid crypto, the larger earn customers who
18 are not in the convenience class will also get ownership of
19 the NewCo. The -- we expect that the ownership interests in
20 NewCo are going to be freely tradeable, and that NewCo will
21 be fully licensed and will comply with all relevant
22 regulations.

23 Your Honor, the third key feature of the plan is
24 that we believe there is the potential for the future growth
25 and development of NewCo. Certainly one of its core

1 functions is going to be manage and maximize the value of
2 the Debtors' illiquid assets for a return to customers.
3 NovaWulf is also going to be investing 45 to \$55 million
4 into NewCo and has plans to grow the NewCo platform over
5 time. There's going to be a lot more discussions about what
6 this means. There will be discussions with regulators along
7 the way, but we believe that NewCo under NovaWulf's
8 leadership has the potential to transform the cryptocurrency
9 industry in a way that is fully licensed and compliant with
10 regulations, and thereby to drive very substantial value for
11 our customers, who, again, are going to own the equity in
12 the NewCo. Your Honor, in terms of next steps --

13 THE COURT: Can I ask you this, Mr. Kwasteniet?
14 I'm opened to page 4 of the slide deck, and there's a
15 demonstrative of key plan highlights. And number 9 is
16 litigation claims where we vigorously pursued for the
17 benefit of general earned Creditors. You had, I think,
18 mentioned a litigation trust. Is the litigation -- how are
19 the -- well, let me back up a second because you talked
20 about the one-time payments to earn account holders with
21 less -- with \$5,000 or less on deposit. Will they stand to
22 benefit from any distributions from any litigation claims?

23 MR. KWASTENIET: Your Honor, the way that we're
24 presently envisioning setting up that litigation trust, and
25 whether it's a trust, whether the claims simply remain in a

1 Debtor entity that remains around, we're going to do this in
2 the most tax-efficient way possible, and tax plays into the
3 structuring. But what we were envisioning, Your Honor, is
4 that the litigation claims will be treated like other
5 illiquid assets. It's an asset that's going to require
6 significant investment, significant time to develop, and
7 would go to those larger earn customers who are going to be,
8 you know, investing time, energy, resources into the NewCo.

9 The idea with the convenience class for several
10 reasons, Your Honor, is to make a premium distribution, if
11 you will, that is in part compensation for the fact that
12 they're not going to be participating in the illiquid
13 assets, which would include the litigation proceeds. And
14 part of this is just a logistical reality, Your Honor, when
15 we're looking at, you know, hundreds of thousands of
16 customers who have, you know, small claims less than \$5,000.
17 Making distributions to them in the future just may not be
18 feasible or practical. And you may end up depleting
19 essentially most of what the value you'd have to distribute
20 through the gas fees, transaction fees, administration fees
21 for even trying to make the distribution.

22 THE COURT: I just wanted to have --

23 MR. KWASTENIET: (indiscernible) --

24 THE COURT: I just wanted to have some clarity
25 about it.

1 MR. KWASTENIET: Yeah.

2 THE COURT: Go ahead.

3 MR. KWASTENIET: Yeah. So the idea with the
4 convenience class is they get an upfront premium, and it's a
5 one-time distribution. And they can take their liquid
6 cryptocurrency and move on with their life and have no
7 further involvement in or need to wait for subsequent
8 distributions from the Celsius estate.

9 Your Honor, as next steps, the Debtors and the
10 Committee are going to continue to work with NovaWulf with
11 the goal of filing a binding term sheet by the end of this
12 month, and a plan and disclosure statement next month. Your
13 Honor, we still have important details to work out, but
14 we're targeting confirmation of our plan and starting to
15 return cryptocurrency and NewCo interests to our customers
16 by as early as June of this year.

17 We read social media speculation about the timing
18 of distributions likely being years and years into the
19 future. We've got a lot of work to do to get there by June,
20 Your Honor, including claims reconciliation, and that's a
21 topic we're going to get into in greater detail later at
22 today's hearing and we'll feature prominently in future
23 hearings. But it is our intention to do everything we can
24 to be in a position to start to make distributions, returns
25 to customers as soon as possible as early as June of this

1 year.

2 Your Honor, that concludes my introductory
3 remarks. And again, I would just note for everybody's
4 benefit the document we filed at 2066, which contains more
5 detail about the plan process. And there will be certainly
6 more detail to come in the coming days and weeks.

7 THE COURT: All right. Let me -- does somebody
8 from the Committee want to address, and then I -- Mr. Adler,
9 I will call on you. First I'm going to call on the
10 Committee, and then I know we're moving on from the agenda,
11 but let me -- does anybody from the Committee want to add
12 something?

13 MR. COLODNY: Your Honor, this is Aaron Colodny
14 from White and Case. Can you hear me?

15 THE COURT: Good morning, Mr. Colodny.

16 MR. COLODNY: Good morning, Your Honor. I agree
17 with Mr. Kwasteniet's description. I think this is a good
18 result. And when we were before Your Honor on exclusivity
19 the first time in December, you know, we set a target of
20 today for the parties to determine the path forward. And we
21 needed to know the Debtor's proposed path out of the Chapter
22 11, or we said we would ask Your Honor to allow us to
23 propose our own. The Debtors listened, and over the past
24 two months we've worked together to develop the proposed
25 plan that's in that deck. And I can sit here saying that

1 that plan is the product of hard-fought negotiations between
2 the Debtors and the Committee and NovaWulf.

3 And I want to talk about a couple of priorities
4 that we had when negotiating that plan, but at a high level,
5 our goal was to provide account holders with as much liquid
6 crypto as possible while preserving the long-term value of
7 the Debtors' illiquid assets. Because the one thing the
8 sale process showed us is if you're to sell those illiquid
9 assets now, we would return, you know, pennies on the dollar
10 compared to what we think they're worth.

11 And so we were focused on -- I have eight
12 elements. I think some were touched on by Mr. Kwasteniet,
13 so I won't repeat them, but you know, the first one is to
14 return as much liquid crypto as we possibly could to account
15 holders. I think that comes through the convenience class
16 that Mr. Kwasteniet talked about. It also comes through in
17 upfront distribution to earn Creditors. And one of the
18 items that you mentioned, Your Honor, about the convenience
19 class not participating in litigation trust, it's our
20 intention that if you have a claim over \$1,000 you can elect
21 to opt into the earned treatment.

22 So if you really like the concept of NewCo, if you
23 really want a piece of those litigation trust interests, you
24 can elect to receive that. You know, we've approached this
25 as giving people options to pick currency that they prefer

1 over other currency.

2 The second, as Mr. Kwasteniet said, we were very
3 focused on ensuring that Creditors own 100 percent of the
4 Debtors' illiquid assets, which will happen through an
5 equity share token in the new company. Third, we wanted to
6 ensure that the new company and the Debtors' liquid assets
7 were managed by experienced and qualified professionals.
8 We've spent a lot of time with NovaWulf, Jason and Michael,
9 and you know, we're very excited about their vision and what
10 they have in store for the new company.

11 Fourth, we think it's incredibly important for the
12 new company to be regulatory compliant to file public
13 reports, 10Ks, 10Qs to show its balance sheet to its public,
14 and be a fully disclosed company, In that regard, and
15 fifth, we're focused on making sure the company has strong
16 governance with qualified board of five to seven. It's
17 seven seats total. Five of the seven are going to be
18 appointed by Creditors.

19 Sixth, we needed to find a solution for the
20 Debtors' loan portfolio, and that included a regulatory
21 compliance servicer. There is a slide in the deck on figure
22 who is a licensed loan servicer who will be providing those
23 services to the new company. Seventh, we were very focused
24 to ensure that the managers at NovaWulf and their interests
25 were aligned with the interests of the token holders. We

1 think that the management share token, which will also be
2 issued to earn Creditors, and we'll give them a dividend of
3 50 basis points off the net asset value of the company.
4 We'll ensure that alignment. And also, we've worked with
5 NovaWulf to structure their fee to make it so that that will
6 align interest, and that they will have a vested interest in
7 making sure those equity share tokens trade and reflect the
8 value of the assets in the company.

9 And then finally, as Mr. Kwasteniet mentioned, the
10 Committee is focused on ensuring that claims and causes of
11 action against former directors and officers of the company
12 that participated in wrongdoing are preserved and litigated
13 to the benefit of Creditors. As Mr. Kwasteniet mentioned,
14 we filed a motion to approve a stipulation, which is not up
15 for hearing today, but the Debtors, and specifically the
16 Special Committee, have agreed to contribute those causes of
17 actions to a litigation trust and to work with the Committee
18 to identify other potential actions that may be contributed
19 to that trust as well.

20 So with that, Your Honor, you know, I think we've
21 come a long way. We've got a framework in front of us now
22 that I think provides a path forward and a path out of these
23 Chapter 11 cases, and we're very appreciative of the Debtors
24 and NovaWulf for working with the Committee tirelessly to
25 make sure that could happen.

1 THE COURT: Let me ask Mr. Kwasteniet. You
2 indicated that you -- call it a convenient class for this
3 purpose, the claims of \$5,000 or less will receive the one-
4 time distribution. You said it would be in liquid
5 cryptocurrency. Let's -- in what -- so assume that someone
6 had deposited \$3,000 worth of Bitcoin. In what
7 cryptocurrency will you be distributing it to them? I mean,
8 I already authorized the sale. (indiscernible) was unclear
9 whether there would be a shortfall by coin type. Have you
10 contemplated how that will work?

11 MR. KWASTENIET: Yes, Your Honor. And for those
12 who have studied the detailed coin reports that we filed
13 periodically on a monthly basis throughout these cases, you
14 will note that there is a real mismatch between the coins
15 that the company received on deposit and owes back to
16 customers and the coins that the company presently has.
17 Some of those coin types were more readily investable than
18 others. And one of the things that Celsius did historically
19 was to swap or sell less investable coin types and trade
20 them for others that were more investable.

21 And so what we are contemplating, Your Honor, is
22 regardless of the type of cryptocurrency those convenience
23 class customers deposited, the return will be in Bitcoin,
24 Ethereum, or USDC, which is one of the leading stable coins.
25 We have to work with a Committee on the exact allocation and

1 whether or not people are going to have an ability to
2 express a preference on it. But those three are relatively
3 easy for us to transact in. They're widely available.
4 They're very liquid, and so that would be the form.

5 So in your hypothetical, somebody who deposited
6 Bitcoin, they may get the -- just the return in Bitcoin.
7 Somebody who deposited some other coin, a Sushi coin or a
8 Solana coin or what have you, we're proposing that the
9 return to those customers be in some combination of Bitcoin,
10 Ethereum, and USDC.

11 THE COURT: And how are CEL tokens going to be
12 treated in this?

13 MR. KWASTENIET: Your Honor, that's been the
14 subject of a lot of discussion and debate with the
15 Committee. I don't think we've reached a 100 percent final
16 conclusion there. But given the fact that the examiner
17 report reveals in great detail how the price of CEL token
18 was manipulated, we've really struggled with how to treat
19 CEL token and what's a fair value to ascribe to it.

20 So one thing I'll note off the top with respect to
21 CEL token is it's our intention to suppress or subordinate
22 the CEL token claims of insiders who were involved in the
23 manipulation of the CEL token price. So some of the
24 insiders who were implicated in the examiner report are also
25 some of the largest holders of CEL token on the Debtor's

1 platform. And it's our intention that they would not
2 receive any recovery or distribution on account of the CEL
3 token.

4 Your Honor, one of the things that we're looking
5 at and discussing with the Committee is what was the initial
6 coin offering price of the CEL token, right? What did we
7 sell it for before the alleged price manipulation entered
8 the picture? And maybe we ascribe I believe that was .20
9 cents, Your Honor, per CEL token. And so there's the
10 thought that maybe we ascribe a .20 cent valuation to the
11 CEL token.

12 Obviously whatever value -- we don't have enough
13 coins to go around to return to all the customers. And we
14 earlier in the case filed a cryptocurrency conversion table
15 in part at Your Honor's suggestion. It was a resolution of
16 an early motion filed by the Series B holders. We filed
17 that at Docket Number 1420, Your Honor. That gives a
18 conversion ratio as of the petition date for the various
19 types of cryptocurrency. We believe that the trading price
20 of CEL token as of the petition date was likely artificially
21 inflated.

22 And if we were to ascribe that value to the CEL,
23 it may take away value from -- or it just means that there's
24 less value to go to the holders of other cryptocurrencies.
25 So we're still finalizing our approach on that, Your Honor.

1 we do recognize that many of our customers took rewards,
2 elected to take rewards in CEL token. Maybe could have
3 taken rewards in other cryptocurrency, and so we think that
4 there needs to be some reflection of that in calculating
5 customers' claims. But we are struggling with the fact that
6 the price of CEL token appears to have been meaningfully
7 manipulated over time, and then therefore, what's the proper
8 value to ascribe to that. So I think more to come, Your
9 Honor, we envision that the plan will include a settlement
10 of the CEL token related claims, and we'll propose, you
11 know, a distribution calculation conversion calculation for
12 the CEL token.

13 THE COURT: Thank you, Mr. Kwasteniet. Anything
14 else you want to add before I call on -- I'm going to call
15 on Mr. Adler next, but anything you want to add, Mr.
16 Kwasteniet?

17 MR. KWASTENIET: No, not unless Your Honor has
18 other questions for me.

19 THE COURT: I don't. Mr. Adler?

20 MR. ADLER: Good morning, Your Honor. David Adler
21 from McCarter and English on behalf of the Ad Hoc Group of
22 Borrowers. I just raised my hand maybe to take issue a
23 little with what Mr. Kwasteniet said about advanced
24 negotiations. We received the proposal on Friday, and we're
25 reviewing it right now. Obviously we're speaking to, you

1 know, the ad hoc group members, but it's a framework, and
2 that's something that we haven't seen, obviously, for the
3 first seven months of this case. And obviously we do like
4 the idea of preserving the loans and minimizing tax
5 consequences. I do think there are a lot of details that
6 need to be worked out as we go through this process, but we
7 were encouraged when we saw it, but we think that there is a
8 fair amount of negotiation that has to go into this process
9 to make sure all the I's are dotted and the Ts are crossed.

10 And that's really all I wanted to say, Your Honor.
11 I mean, I had filed, I guess it was last Tuesday, a
12 complaint on behalf of the Ad Hoc Group Borrowers alleging a
13 variety of causes of action. That was done in part because
14 of the fact that we weren't having discussions with the
15 Debtors, and I wanted to prompt them. But obviously, we
16 look forward to, you know, continuing this process and
17 resolving and hopefully negotiating some of these points
18 that are still open issues for my group.

19 Just as a final point, Your Honor, we thought it
20 would be best for the plan sponsor to be unveiled so that we
21 could have -- you know, if we are giving our points to the
22 Debtor and the UCC, they're conveying them to the plan
23 sponsor. From our perspective, in terms of efficiency, we
24 thought it might make sense that we're all together when
25 we're discussing such issues as 3630. We have

1 understandings about the solvency of the plan sponsor and
2 stuff like that so that we can, you know, not have to go
3 through an intermediary to get the -- you know, the issues
4 that we're concerned about addressed.

5 So that's really my main point, Your Honor. But I
6 will say that I thought it was a framework that we can work
7 from. It has to be tweaked. There are points of
8 negotiation, but it is something that we were encouraged to
9 see. Thank you.

10 THE COURT: Thank you very much.

11 MR. LEBLANC: Yes, Your Honor. Andrew Leblanc,
12 Milbank. Can you hear me okay, Your Honor?

13 THE COURT: I can, yes.

14 MR. LEBLANC: And Your Honor, I'll be very, very
15 brief. We saw the framework that Mr. Kwasteniet and Mr.
16 Colodny just discussed for the first time this morning when
17 it was filed overnight. As best we can tell from our quick
18 review of it, it doesn't -- it seems to just ignore the
19 existence of the issues that we have been litigating and
20 expect will have to be continued to be litigated over the
21 coming weeks and months. And so from that perspective we
22 were disappointed. I think unlike Mr. Adler where there's a
23 framework at least in place in a context for them to have a
24 discussion of a resolution of that.

25 It either presumes an outcome of our disputes or

1 just ignores their existence entirely. And so we'll
2 obviously take issue with that. I know today is not the
3 time to do it, but I wanted to make clear to Your Honor that
4 it certainly is not something that we view as satisfactory
5 and doesn't -- frankly doesn't have any room for those
6 issues to be resolved as best we can tell from a quick
7 review of it.

8 THE COURT: Thank you.

9 MR. LEBLANC: So we'll be dealing with those
10 issues.

11 THE COURT: Okay. Thank you, Mr. Leblanc. Mr.
12 Iovine was another hand raised. Go ahead.

13 MR. IOVINE: Good morning, Judge. This is Jason
14 Iovine, a pro se Creditor. In regards to the evaluation of
15 CEL token, I would just hope that (indiscernible) and White
16 and Case take into consideration that a lot of retail users
17 did not buy at .20 cents. We bought at all-time highs all
18 the way down. And it's just more punishment on the retail
19 user, insiders 100 percent agree with you all. Should be
20 zeroed out on them and everything but needs more
21 consideration than .20 cents. At the filing date it was .81
22 cents.

23 THE COURT: All right. Thank you, Mr. Iovine.

24 MR. IOVINE: Thank you, sir. Thank you, Your
25 Honor.

1 THE COURT: Mr. Lennon, briefly. I want to move
2 onto the agenda. This was mostly informational, so there's
3 nothing that's going to be decided today, but go ahead, Mr.
4 Lennon.

5 MR. LENNON: Good morning, Your Honor. Brian
6 Lennon of Willkie Farr and Gallagher. We represent Global X
7 Digital, which is one of the bidders in the Debtors'
8 process. I stand today for the limited purpose of just
9 letting the Court know that Global X is disappointed to see
10 the statement this morning, especially the part about the
11 auction being potentially canceled. We continue to believe
12 that we can present the estates with the value-maximizing
13 proposal for the Debtors' mining business and potentially
14 more.

15 We would note that the (indiscernible) proposal
16 has not been finalized. And as Mr. Kwasteniet acknowledged,
17 here's a lot of work to do and we're a long way from June.
18 And we would ask and urge the Debtors and the UCC to
19 continue discuss the merits of our proposal and allow the
20 negotiating process to continue to play out as it should in
21 any Chapter 11 case. Thank you.

22 THE COURT: Thank you. Mr. Frishberg, very
23 briefly.

24 MR. FRISHBERG: I'll be as brief as I can.
25 Effectively, the price of CEL token at .20 cents, when they

1 had the ICO, most of the CEL token did not actually sell at
2 that price. And something to counter Mr. Iovine's point,
3 something like only five percent of CEL token holders are
4 account holders. Sorry. Only five percent of account
5 holders hold significant amounts of CEL token over \$5 or
6 something like that. So I don't have the (indiscernible).
7 3.5. Something like that. Anyways, just take that into
8 consideration, please. Thank you so much.

9 THE COURT: Thank you very much, Mr. Frishberg.
10 All right. Mr. Kwasteniet, move on with the agenda if you
11 would.

12 MR. KWASTENIET: Thank you, Your Honor. I believe
13 the next item on the agenda is an update from the Consumer
14 Privacy Ombudsman, so I will yield the floor.

15 THE COURT: All right. Ms. Thomson, go ahead.

16 MS. THOMSON: Good morning, Your Honor. My name
17 is Lucy Thomson. I'm the Consumer Privacy Ombudsman. I
18 filed my report on January 27th at Docket Number 1948. With
19 Your Honor's permission, I would like to speak very briefly
20 about next steps for privacy and highlight two important
21 issues that should be on the Court's radar as discussions
22 about the new company go forward.

23 THE COURT: Go ahead.

24 MS. THOMSON: The direction that the Debtors are
25 taking may provide opportunities for protecting the privacy

1 of the consumer data. Their plans look promising. There's
2 still further work to be done to identify the privacy rights
3 of the active account users and develop a plan to dispose of
4 the personal data of investors with inactive accounts. And
5 I noted from the PowerPoint that the Debtors have no privacy
6 information on their PowerPoint slide number 12 about
7 governance and oversight, and I look forward to working with
8 them on that issue.

9 I direct the Court's attention to my report on
10 page 7 where there's a table that shows Your Honor and the
11 parties who the investors are and how they can be grouped
12 according to the status of their accounts and where they
13 live. It's not obvious who these people are. So this table
14 shows that there's 1.7 million total account holders. More
15 than 600,000 of these individuals have active accounts, and
16 1.1 million have accounts that are inactive.

17 And you'll note from the table that Celsius
18 account holders reside in all 50 states and U.S.
19 territories, 370 of the active 1,000 active users reside in
20 200 countries around the globe, including all 27 European
21 Union countries. So there's laws passed by these various
22 entities that govern some of the transactions and privacy
23 protections that these people will need to receive. And as
24 an example, the Celsius privacy policy actually provides
25 quite different privacy protections for residents of

1 California as well as residents of the EU countries.

2 So I want to address briefly the active account
3 holders' privacy issues separate from the inactive accounts.
4 The Debtors have indicated they intend to migrate the
5 accounts of approximately 600,000 investors with active
6 accounts to the new company. And has been mentioned
7 earlier, due diligence should be conducted about the
8 leadership of the new company and the plan sponsor to ensure
9 that they'll protect the personal privacy of these account
10 holders. This is the purpose of bankruptcy courts having
11 applied the qualified buyer criteria in many prior
12 bankruptcy cases as I explained on pages 37 to 39 of my
13 report.

14 In addition, the new company should provide an
15 opportunity to develop a new privacy policy that strikes an
16 appropriate balance between the legitimate business
17 interests of the company and the privacy rights of
18 investors. The new privacy policy should be formulated
19 before any new company is approved.

20 And then the second issue is what to do about the
21 personal data of the inactive account holders. The Debtors
22 have advised me that they do not plan to sell the data of
23 individuals with inactive accounts. This is a very good
24 decision from a privacy perspective. If that data is not
25 sold, that data -- that decision will protect the privacy of

1 more than 1,100,000 Celsius account holders. But a plan for
2 retention and disposal of the personal data of the inactive
3 account holders must be developed promptly. There's a huge
4 amount of personal and financial data on these inactive
5 account holders, including biometric data, geolocation data,
6 and other highly sensitive data.

7 This data must be retained for five to seven years
8 to comply with IRS and other banking requirements, bank
9 secrecy acts, state data disposal laws, and GDPR and country
10 laws. Decisions must be made concerning how this data will
11 be retained and how it will be disposed of during the data
12 -- once the data retention period has expired. This has
13 been a problem for bankruptcy courts in prior cases because
14 retention and protection of this data requires a designated
15 entity and resources to protect and process the data.

16 So one option would be for the new company to take
17 on the job of protecting this data. And the sale order
18 should say that this data cannot be sold at any point in the
19 future. So I look forward to working with the Debtors and,
20 Your Honor, the other parties to develop the details of
21 these important issues.

22 And finally, I want to say that we shouldn't
23 underestimate the importance of the need to protect the
24 privacy of these active and inactive account holders. I set
25 forward in my report on pages 31 to 36 details of the

1 significant risks that cryptocurrency investors are facing.
2 In fact, the FBI and other law enforcement agencies have
3 pointed out that cryptocurrency companies have been the
4 target of numerous hacker attacks. And it's interesting
5 that the joint statement on crypto asset risks to banking
6 organizations that I included for Your Honor's review at
7 Appendix B observes that many retail investors and consumers
8 have been harmed during the past year because of their
9 involvement with cryptocurrency companies.

10 The FBI has issued unprecedented warnings
11 concerning the potential exposure of cryptocurrency customer
12 account information to cybersecurity risks, and you could
13 see that it's highly unusual for the FBI to issue such
14 warnings, there's four or five of them, with such frequency
15 and specificity.

16 So, in conclusion, I'm available to work on these
17 issues with the Debtors and the parties and Your Honor to
18 protect this important data and develop a privacy policy for
19 the new company, determine how to protect the data of
20 investors with closed accounts, and develop a plan for how
21 the company can comply with the many state and country laws
22 and GDPR that will govern some of the rights of these
23 investors. So I'm pleased to answer any questions you may
24 have.

25 THE COURT: Let me ask you, Ms. Thomson -- thank

1 you very much for your report. I didn't read your entire
2 report. It's 86 pages long. I've skimmed through some of
3 it. I have it up on my screen right now, in fact, as you've
4 been talking about different sections. Do you have specific
5 contacts at both Kirkland and Ellis, and White and Case with
6 whom you've been dealing? If you don't, what I -- Mr.
7 Kwasteniet I think and Mr. Colodny, I want to be sure that
8 these privacy issues are dealt with as you're moving forward
9 to put the details of the plan structure together. So are
10 you able to tell me, Ms. Thomson, are -- do you have points
11 of contact that you've dealt with?

12 MS. THOMSON: Oh, I do, yes. I've been working
13 with Mr. Kwasteniet and Mr. Latona and Ms. Goldman and many
14 people in Celsius. They've been --

15 THE COURT: Okay.

16 MS. THOMSON: -- very helpful. And I've spoken
17 with the Committee lawyers from time to time, but there's
18 many details. As you know, devil's in the details here.
19 And these are some issues that tend to be somewhat
20 complicated, they're all totally solvable.

21 THE COURT: All right. Thank you very much. All
22 right. Who's going to proceed for the Debtors now?

23 MR. LATONA: Good morning, Your Honor. Dan Latona
24 of Kirkland and Ellis on behalf of the Debtors.

25 THE COURT: Thank you, Mr. Latona.

1 MR. LATONA: The next item on the agenda -- good
2 morning. The next item on the agenda is the final GK8 cash
3 management order. The Debtors filed a declaration in
4 support of that at Docket Number 2021. That's the
5 declaration of Robert Campagna, managing director at Alvarez
6 and Marsal, the Debtors' financial advisor. We also filed a
7 revised proposed order this morning at Docket Number 2070
8 that cleans up the interim order to the final order.

9 Your Honor, the last remaining issue on the cash
10 management order is the 345(b) waiver. We've been in
11 discussions with the U.S. Trustee's Office on working with
12 Bank Hapoalim in the Israeli branch and the Herzliya branch
13 where those GK bank accounts are housed to execute a uniform
14 depository agreement. Unfortunately, to this date we
15 haven't been able to do that. However, we do believe that a
16 waiver is appropriate in these cases.

17 Bank Hapoalim is one of the largest banks in
18 Israel. And based on current conversion rates has
19 approximately \$189 billion in assets and approximately \$152
20 billion in deposits. It's traded on the Israeli stock
21 exchange and has a market capitalization of approximately
22 \$11 billion. It publicly discloses its financials and
23 assesses its capital adequacy based on the Basel III
24 directives, which were implemented and created in the wake
25 of the banking crisis.

1 I don't believe Ms. Cornell has a formal
2 objection, but I'll certainly allow her to speak for
3 herself. Otherwise, unless Your Honor has any questions, we
4 would request entry of the order on a final basis at Docket
5 Number 2070.

6 THE COURT: Ms. Cornell?

7 MS. CORNELL: Thank you, Your Honor. Shara
8 Cornell on behalf of the Office of the United States
9 Trustee. That is correct. Debtors were unable to obtain a
10 uniform depository agreement with Bank Hapoalim and they
11 have submitted a statement in support of 345(b) waiver.
12 However, it is the Court's province to grant a 345(b)
13 waiver, not the United States Trustee.

14 THE COURT: And do you object to the waiver being
15 granted here? It is my decision, but I'd like to know what
16 your position is.

17 MS. CORNELL: I have no objection at this time,
18 Your Honor.

19 THE COURT: All right. Then the waiver is
20 granted. Mr. Latona, you can submit the order and it'll be
21 entered, okay?

22 MR. LATONA: Thank you, Your Honor. Next --

23 THE COURT: Thank you very much, Ms. Cornell.

24 MR. LATONA: Your Honor, the next item on the
25 agenda is the Debtors' sale motion of Bitcoin or Bitmain

1 coupons and credits. As part of the Debtors' ordinary
2 course mining operations, the Debtors purchase mining rigs
3 from various third-party vendors, and specifically for the
4 purposes of this motion from Bitmain Technologies. And as
5 an incentive for the Debtors and other mining operators to
6 purchase additional mining rigs in the future, Bitmain
7 provides certain incentives. First, the issuance of coupons
8 at no cost. These coupons are typically applied toward
9 future purchases in increments from 10 to 30 percent of the
10 total price.

11 The Debtors hold approximately 37 million in
12 aggregate of these Bitmain coupons. They do begin to expire
13 beginning in March, Your Honor, so selling them and working
14 with third-party purchasers is of the essence. And as these
15 coupons inch closer to the expiration date, they do lose
16 significant value. And so coupled with that and the
17 secondary market of purchasers, the availability of the
18 particular type of mining rigs that the coupons are eligible
19 to purchase, they do fluctuate in value. So it is
20 imperative that the Debtors quickly work with third parties
21 to monetize these coupons.

22 In addition, Your Honor, as part of purchasing
23 rigs and the fluctuation of the value of these rigs, Bitmain
24 will issue credits to mining operators to be allocated
25 toward future purchases. So for example, if the initial

1 contract value for mining rigs is 100 million, an initial
2 purchase or initial installment payment of 25 million is
3 made. Six months later a second installment payment of \$35
4 million is made. And then at the time of final payment,
5 Bitmain calculates the fair market value of the rates at
6 that time. So in this example, if the fair market value is
7 \$50 million, the Debtors have already paid \$10 million.
8 Bitmain will issue a credit that can be used toward the
9 future purchase of additional mining rigs.

10 THE COURT: But as I understand it, the credits
11 are not assignable. Celsius would have to issue the
12 purchase order --

13 MR. LATONA: That's right.

14 THE COURT: -- in order to take advantage of it.

15 MR. LATONA: That's right. So Your Honor, what
16 the Debtors would propose to do in this instance is enter
17 into a contract with Bitmain and then assign their rights to
18 a third party under that purchase agreement. As part of
19 that, they would execute the agreement using the credits,
20 and also certain coupons that are not going to be monetized
21 as part of the sale process. They're going to be monetized
22 as part of the credit monetization process. So Your Honor
23 --

24 THE COURT: Let me ask you a couple of questions
25 first. So as I understand it, you want to be able to sell

1 the Bitmain coupons in a private sale without any actual
2 auction. And I understand the urgency because of expiration
3 dates. I have -- I want to hear what the Committee and what
4 the U.S. Trustee has to say about it. No objections were
5 filed to this motion. My question, Mr. Latona, are
6 primarily about the Bitmain credits. And one question I
7 have is in Bitmain refused to accept purchase orders from
8 Celsius without adequate assurance of future performance.

9 MR. LATONA: Your Honor, I believe the Debtors
10 would, you know, make sure that whatever assignment we make
11 to third parties would contain that. We consider the --

12 THE COURT: Let me tell you I've got a couple of
13 problems, and let me get them all on the table, okay? So I
14 had -- the first issue was whether Bitmain can assist on
15 adequate assurance of future performance and what form that
16 would be given. I don't know whether there have been --
17 whether Celsius has actually been in negotiations with
18 Bitmain about how to deal with this and whether this issue's
19 been addressed.

20 The bigger problem I have, and it's not addressed
21 in any of the papers, is what happens if Celsius enters into
22 a purchase order? Essentially, it's committed to buy. If
23 it doesn't perform, it arguably is an administrative claim.
24 And what happens if Celsius orders rigs and its proposed
25 counterparty assignee defaults? Is Celsius going to be on

1 the hook for an administrative claim for the purchase of
2 rigs it really doesn't want?

3 MR. LATONA: Your Honor --

4 THE COURT: I'm concerned -- look, the entire
5 crypto industry and mining have been in such turmoil. What
6 protections or assurances are there that -- as to the
7 creditworthiness of the assignee? The one thing I don't
8 want to find out is that Celsius has entered into a purchase
9 order to purchase rigs. Yes, they'll have coupons to apply
10 for part of the price, but commit to a price, and then have
11 its assignee walk away leaving you holding the bag.

12 MR. LATONA: Yes, absolutely, Your Honor.
13 Understood your concern. So what I will say in this
14 instance is, one, there would be no cash leaving the estate.
15 It would be the application of credits and coupons.
16 Secondly, we have been in consistent discussions with the
17 Committee regarding these coupons and credits. They do have
18 consent rights. So what we would do is we would make sure
19 that the Committee is comfortable with the third-party
20 purchaser, that that purchaser has the capacity to execute
21 on the contract. What also --

22 THE COURT: I haven't seen -- what you're
23 describing now I haven't seen in writing anywhere. And
24 you're asking me to approve the Debtor entering into
25 transactions for Bitcoin -- Bitmain credits that would

1 require the Debtor to commit to the purchase of rigs without
2 me seeing what protections or assurances are there that the
3 assignee is creditworthy, and it'll perform. You say that
4 the Committee has approval rights, but I'm -- that's what my
5 concern is. So I need to hear more about it.

6 MR. LATONA: Yes, Your Honor. We can, you know,
7 work with the Committee on a revised form of order that
8 addresses these concerns. We can, you know, fund the
9 coupons and credits into escrow so that if the third-party
10 purchaser cannot execute on the agreement, that comes back
11 into the Debtors' estate and we can work with another third
12 party to, you know, apply those credits and --

13 THE COURT: The coupons didn't, I don't think,
14 raise that issue because you're just looking to sell them.

15 MR. LATONA: That's right.

16 THE COURT: It's the credits that I was
17 uncomfortable about.

18 MR. LATONA: That's right, Your Honor. There is a
19 subset of coupons that we are not having to sell, but we are
20 looking to use in connection with this monetization process.
21 So those would come back into the estate, not the coupons
22 that we're looking to sell.

23 THE COURT: Well, let me hear from the Committee
24 with respect to the coupons.

25 MR. WOFFORD: Yes. Your Honor, Keith Wofford from

1 White and Case on behalf of the Committee. As the Debtor's
2 counsel noted, this motion has been the subject of
3 continuing dialogue with respect to the mining business.
4 And the Committee, like the Debtors, were concerned about
5 the expiring nature of the coupons. They are effectively a
6 melting ice cube. And thus, with the Committee consent
7 mechanic that was in the revised order, the Committee
8 supports the relief requested. With respect to --

9 THE COURT: I don't have the same problem about
10 the coupons. I understand that because they'll hopefully
11 find a buyer and you'll -- they'll get the price for it.
12 It's the credits that gave me some heartburn.

13 MR. WOFFORD: Understood, Your Honor. I -- we
14 heard your commentary loud and clear. I think as part of
15 our consent mechanism, number one, we do have the concern
16 with the credits that there is an active market, and we have
17 to do things opportunistically in that market. And I think
18 what we should probably do, Your Honor, is, although the
19 Committee contemplated this in the first place, I think we
20 should either have a mechanism where we get releases
21 effectively from Bitmain in the nature of an ovation, or
22 alternatively adequate credit assurances to protect the
23 Debtors.

24 THE COURT: All right. So Ms. Cornell, do you
25 want to be heard on this?

1 MS. CORNELL: Your Honor, we take no position on
2 (indiscernible) --

3 THE COURT: All right.

4 MS. CORNELL: -- at this time. Thank you.

5 THE COURT: I'll approve the motion to the extent
6 of the sale of the Bitcoin -- Bitmain coupons, excuse me.
7 Bitmain coupons and permit the private sale of those. But I
8 want to see more information about the credit. The credits
9 don't expire as I understand. Is that correct?

10 MR. LATONA: Your Honor, Dan Latona of Kirkland
11 and Ellis. They do expire in December of 2024. They expire
12 two years after the final delivery of the rigs.

13 THE COURT: Okay. So there isn't the same timing
14 urgency with respect to the credits that there was with
15 respect to the coupons. And --

16 MR. LATONA: The only --

17 THE COURT: Go ahead.

18 MR. LATONA: I'm sorry, Your Honor. The only
19 timing urgency is, Your Honor, is that Bitmain can change
20 the terms of credit sales. For example, a few weeks ago,
21 credits were freely assignable to third parties. Bitmain
22 changed its terms on that.

23 THE COURT: Well, so give me assurance. You
24 haven't -- you didn't file anything in your papers about
25 this. And I see credit -- I see risk for the Debtors with

1 respect to the credits. You'll put your purchase orders in,
2 and then in theory that's an administrative claim. And if
3 your counterparty doesn't perform, good, you've got a
4 lawsuit, you know? And how do I know that it isn't a
5 company that's on the verge of its own insolvency
6 proceedings and rejects the contract?

7 MR. LATONA: Understood, Your Honor.

8 THE COURT: I'm very uncomfortable. You haven't
9 -- put it this way. Nothing in the papers gave me the
10 comfort that I need to be able to approve this. So I'm open
11 to doing it if you can satisfy me that between the Committee
12 -- and I am somewhat comforted that the Committee has
13 approval rights on this, but I don't think either of you
14 want to have egg on your face when suddenly Celsius winds up
15 on the hook for a large administrative claim, and then can
16 go take a counterparty who probably will -- you know, will
17 assert various defenses to the assignments. But you haven't
18 given me any comfort about any of that.

19 MR. LATONA: Thank you, Your Honor. Understood.
20 We'll work with the Committee what we would propose, and we
21 can build this into a revised form of orders that the pre-
22 payment has to be funded in escrow before a contract can be
23 executed. But --

24 THE COURT: Okay.

25 MR. LATONA: -- we take Your Honor's comments

1 seriously, and we'll work with the Committee on a revised
2 order.

3 THE COURT: Thank you. All right. Let's go on,
4 on the agenda.

5 MR. LATONA: Thank you, Your Honor. At this time,
6 I'm ceding the virtual lectern over to my colleague Ms.
7 Jones.

8 MS. JONES: Good morning, Your Honor. Elizabeth
9 Jones of Kirkland Ellis on behalf of the Debtors. Can you
10 hear me okay?

11 THE COURT: I can, Ms. Jones. Go ahead.

12 MS. JONES: Thank you. Your Honor, the next item
13 on the agenda is the Debtor's motion seeking an order
14 approving omnibus claims objection procedures and form of
15 notice approving notice of satisfaction and approving the
16 omnibus substantive claims objections in addition to those
17 already enumerated in Bankruptcy Rule 3007(d). In addition,
18 Your Honor, we are seeking a modification of Bankruptcy Rule
19 3007(e)(6) to increase the limit from 100 claims objections
20 in one motion to 250.

21 Your Honor, we filed the motion at Docket Number
22 1972. And since filing the motion, we've received one
23 limited objection filed at Docket Number 2040. And late
24 last night we filed a replay at Docket Number 2064 and a
25 revised proposed form of order at Docket Number 2065. Your

1 Honor, with respect to the modification of Bankruptcy Rule
2 3007(e)(6), the reason we're seeking that here is today
3 we're still reconciling our claims register since the end of
4 the bar date, but we've had approximately 23,000 claims
5 filed. And so we're seeking a slight increase to continue
6 to move this along effectively and efficiently.

7 In addition, Your Honor, if I may take a moment in
8 discussions with the Committee, we took some of their
9 comments in their revised proposed form of order, but we
10 also had discussions with them. And we thought it might be
11 helpful if, in seeking approval of the motion today, we can
12 just explain to the Creditors and those on the line what
13 we're seeking to do here to hopefully ease some of their
14 concerns about objections that may be filed in the future
15 and hopefully address the concern that their claim may be
16 expunged in its entirety.

17 THE COURT: All right. And Mr. Ubierna filed a
18 limited objection at 2040. And am I correct that the
19 language that you proposed in the amended order is intended
20 to deal with issues that Mr. Ubierna has raised?

21 MS. JONES: Yes, that's correct, Your Honor.

22 THE COURT: All right. So go on and give your
23 explanation. I think it would be helpful to everybody.

24 MS. JONES: Thank you, Your Honor. First and
25 foremost, as you heard earlier today, we're hopefully and

1 cautiously optimistic that we're moving forward towards
2 solicitation of a plan. And part of that is making sure
3 that the voting process is both fair and effective. So with
4 respect to that, some of the first claims objections that
5 we're likely going to need to clean up here is when we filed
6 our schedules and statements, we filed every single account
7 listed. Since that time, the Debtors have been working very
8 hard to reconcile that information to identify any
9 individuals who may have more than one account on the
10 platform and identify whether or not that is in violation of
11 the terms of use.

12 So for example, if someone has seven accounts on
13 the platform, that may have been done in violation of the
14 requirement to only have one account. And with respect to
15 that, we would likely file a claim objection to reduce their
16 claim just so it's with one account, one amount so they're
17 only getting to vote one time instead of seven times.

18 Second, Your Honor, and this is probably where
19 there may be some of the most concern with respect to pro se
20 Creditors, is in the event a pro se Creditor or other
21 Creditor filed a proof of claim that does not match what we
22 have in our schedules and statements, and the documentation
23 that they have provided in their claim does not demonstrate
24 that they should have this alternative amount, we would
25 likely seek to file an objection to reduce and allow but not

1 to expunge their claim in the entirety, but to match it to
2 what we have on the schedules and statements, which should
3 match exactly what's in their account. I think one example
4 of this is you may have seen in a footnote that there was an
5 accidental claim filed in 117 quadrillion. We recounted
6 that. It was --

7 THE COURT: Are you sure it was accidental?

8 MS. JONES: Well, so I will say this. The
9 evidence that was attached to the proof of claim includes a
10 screen shot of the type and amount of digital assets in the
11 Celsius account for that user. We cross-referenced that
12 with the schedules and statements, and it matches down the
13 decimal exactly how we scheduled it. So it may not have
14 been accidental, but with respect to that claim and similar
15 claims like that, we would file an omnibus claim objection
16 seeking to reduce and allow in the amount scheduled so that,
17 for example, if someone either misses the notice or chooses
18 not to respond because they're okay with that approach,
19 they're not disenfranchised from voting. Their claim isn't
20 being wiped entirely, and we're not seeking to remove or
21 penalize anyone for doing their best to file a proof of
22 claim and to preserve their rights only to make sure that
23 individuals are voting in the appropriate amount.

24 Finally, Your Honor, this is one that is
25 enumerated in Rule 3007(d), but pro se Creditors may not be

1 as familiar with, that throughout the bar date, if you file
2 multiple claims, it's usually the last filed claim that we
3 deem as what is allowed or admissible or what you are filing
4 as what you think your claim is worth. If you have filed 1,
5 2, 3, 4, we would need to go in and seek approval to expunge
6 claims 1 through 3 so that 4 stands. Again, that's typical
7 of a clean-it-up. It's going to help us when we go through
8 the solicitation and voting process to make sure that we are
9 accurately counting votes and that individuals are getting
10 the correct amount of votes.

11 So with that, I will reiterate that our goal here
12 is not to disenfranchise Creditors, but really to clean up
13 the claims register to make sure that voting is fair and
14 equitable. And as Your Honor noted earlier, with respect to
15 that, we appreciate and respect Mr. Ubierna de las Heras'
16 objection, and we hope that the language that we've provided
17 resolves that for him, which I can walk through the brief,
18 and I'm happy to reiterate into the record if that's
19 helpful.

20 But we've added in both the proposed claims
21 objection procedures and claims objection form of notice
22 that any Claimant who has received an omnibus objection, if
23 they choose to file a response, in that response they can
24 also seek discovery. The way that it would go is they would
25 identify in their response that they want discovery. They

1 would notice that. We would come to the Court for the next
2 hearing with respect to their claim. It would be treated as
3 a status conference to determine whether or not discovery is
4 necessary, and if so, set the appropriate schedule. So we
5 want to make sure that Creditors are aware of their rights
6 and have an equal opportunity to participate.

7 THE COURT: Let me ask you a couple of questions.
8 That -- your proposed order also included proposed
9 satisfaction procedures?

10 MS. JONES: That's correct.

11 THE COURT: And I'll describe it as a mismatch,
12 but you do not require a minimum number of calendar days
13 after a notice of satisfaction has been served when the
14 hearing can actually occur. You treat notices of
15 satisfaction and any disputes about that differently than
16 claims objections. Can you address that?

17 MS. JONES: Yes. Your Honor, our goal there is
18 that if we believe a claim has been satisfied is to send
19 that notice. We've added a third request to the Committee.
20 They would see that before it went out, so they would have
21 that opportunity, and that we would only schedule a hearing
22 if we get a response. I understand that the way that the
23 timing works isn't as clear. So we're happy to adjust and
24 mirror the 30 days just to keep it consistent and not to
25 confuse Creditors there.

1 THE COURT: I would prefer if it was consistent
2 between. Because in theory, you could wind up, if there was
3 a hearing next week, you'd send the notice and you'd put it
4 on for the hearing next week, and the Creditor may never
5 even realize what's happening. And so I think that I do
6 want this to be efficient, and it may be that the longer
7 period isn't really required for the satisfaction
8 procedures, but the order covers both. I would be more
9 comfortable if the same time periods were included with
10 respect to both the proposed objection procedures and the
11 satisfaction procedures.

12 MS. JONES: Absolutely, Your Honor. We'll make
13 that change and submit a further revised proposed order to
14 chambers.

15 THE COURT: All right. Mr. Ubierna, do you wish
16 to be heard?

17 MR. UBIERNA DE LA HERAS: Your Honor, Victor
18 Ubierna de las Heras, pro se Creditor. The proposed revised
19 order defined by the Debtors reserves my objection. Thank
20 you.

21 THE COURT: All right. Thank you very much. And
22 I appreciated your objection. I think it was well-taken.
23 I'm glad the Debtor was able to resolve it. Okay. Does
24 anybody else wish to be heard with respect to the omnibus
25 claims objection and claim satisfaction procedures? All

1 right. It's approved, Ms. Jones. Thank you.

2 MS. JONES: Thank you.

3 THE COURT: I did have a very brief opportunity to
4 look at the changes that you made. That's fine.

5 MS. JONES: Thank you, Your Honor.

6 THE COURT: All right. So you'll fix the timing,
7 and subject to the last review by the Court, it will be
8 entered, okay?

9 MS. JONES: Yes. Thank you, Your Honor.

10 THE COURT: Thank you very much, Ms. Jones.

11 MS. JONES: With that, I'd like to cede the
12 lectern to my colleague Mr. Koenig.

13 MR. KOENIG: Good morning, Your Honor. Chris
14 Koenig of Kirkland and Ellis for Celsius. I'm going to
15 address the next several items on the agenda. First up is
16 the exclusivity motion. That's Agenda Number 6. We filed a
17 revised proposed order late last night at 2068. We filed a
18 reply to certain objections that we had received at Docket
19 Number 2067.

20 As we discussed at the start of the hearing,
21 following our month-long bid process, we've now selected the
22 NovaWulf plan sponsor transaction in order to maximize the
23 value of Celsius' assets and distribute that value to our
24 stakeholders. We're seeking a second extension of our
25 exclusive periods to file and solicit a plan to give us

1 sufficient time to finalize the documentation with NovaWulf
2 from the Committee and file the Chapter 11 plan that
3 embodies the transaction that we're all contemplating.
4 We're seeking an additional month and a half of the plan
5 filing deadline that's through March 31st, and an additional
6 three months after March 31st to solicit the plan. That's
7 through June 30th.

8 We're of course hoping to move faster than that,
9 but we ask for these periods to give us a little bit more
10 time to the extent it becomes necessary as we finalize the
11 documentation and ultimately solicit the plan. We've agreed
12 to the Committee's request to include incremental milestones
13 in the exclusivity order. Specifically we've agreed to file
14 a term sheet contemplating the NovaWulf transaction on the
15 docket by February 28th or such later date as we agree with
16 the Committee. And we will file both a plan and a
17 disclosure statement by March 31st or such later date as is
18 agreed with the Committee.

19 With this agreement on the interim milestones and
20 with the other progress we've made in the case, with
21 securing the agreement and principle with NovaWulf, we
22 understood that that resolves the Committee's objection to
23 exclusivity. In addition to the Committee, we've been
24 building a coalition of other supporting parties as well.
25 As Mr. Kwasteniet mentioned, we have an agreement in

1 principle with the Ad Hoc Group of Custody Holders, which
2 we'll describe a couple of agenda items down. And we've
3 been, you know, also making progress with other
4 constituents. You know, Mr. Adler, we've made significant
5 progress with him. He can speak for himself, but we
6 understand that he doesn't intend to pursue his objection to
7 exclusivity given the constructive dialogues that we've had.

8 To be sure, Your Honor, there is more work to do.
9 We have other stakeholders. We have 600,000 account
10 holders, most of which are not represented by counsel. So
11 we have plenty of public outreach and explanation that needs
12 to take place in the coming days and weeks, and we intend to
13 do just that, and today is the first day of that process.
14 We don't have a resolution with the withhold group yet. We
15 either need to come to a consensual resolution with them or
16 litigate the issues surrounding the withhold accounts. And
17 of course the regulators are critically important as well.

18 We've had initial conversations with certain
19 federal and state regulators, answered some additional
20 questions, provided some additional diligence, but we need
21 to continue those conversations, and we will. But we've
22 made very significant progress since the exclusivity was
23 last extended in December. We now have the Court's
24 (indiscernible) ruling, which is the basis for the Chapter
25 11 plan. We've briefed and argued the Series B preferred

1 issue last week. We have identified the NovaWulf deal as
2 the transaction that provides the best path forward out of
3 Chapter 11, and that transaction is supported by the
4 Committee.

5 We have a settlement with the custody holders.
6 We're having constructive dialogues with other stakeholders
7 as well. And we've also done all of that while dealing with
8 other critical workstreams in these Chapter 11 cases,
9 including the GK8 sale, complying with the examiner's
10 diligence request and interviews, finding new hosting deals
11 for the mining business, reopening the platform to allow for
12 withdrawals for custody holders, de minimis asset sales to
13 maximize value, along with all the other administrative
14 burden of Chapter 11 cases. You know, we have Chapter 11
15 reporting, you know, monthly operating reports, schedules,
16 and statements, and all the rest of it.

17 Put simply, given the unprecedented legal issues
18 in this case and the challenges across the cryptocurrency
19 industry, the fact that we're standing here today with a
20 framework for a volume-maximizing path forward that is
21 supported by the Committee and one ad hoc group, and we have
22 discussions with several of the other ad hoc groups, that's
23 the definition of the Chapter 11 process working as intended
24 for force the Debtor to engage with different stakeholders
25 to negotiate.

1 The exclusive period is intended to require a
2 Debtor to make incremental progress towards a plan in order
3 for there to be cause for the Court to continue to extend
4 the exclusive periods. We've done exactly that here with
5 all the progress that we've made today, including most
6 notably our selection of the NovaWulf transaction. And
7 we've put forth a very viable timeline for the plan to be
8 proposed, the disclosure statement to be approved,
9 solicitation to occur, and for confirmation to occur.

10 At the end of the deck that Mr. Kwasteniet
11 referenced at the top of the hearing, there's an
12 illustrative timeline for all of those milestones that
13 includes a confirmation hearing hopefully in June. So Your
14 Honor, I'll pause there. You know, we filed a reply. I
15 know that there are some objections that remain outstanding.
16 I don't know exactly who intends to impress their objections
17 today but let me pause there. I don't know if the Committee
18 wants to speak or some of the objecting parties, and then I
19 can reply.

20 THE COURT: Well, I want to speak first.

21 MR. KOENIG: Great. Thank you.

22 THE COURT: So the Debtor's motion is at ECF 1940.
23 Objections were filed by Mr. Ubierna de las Heras at ECF
24 1996, the ad hoc group of withhold account holders at ECF
25 1940, Emmanuel Herman at ECF 2015, the U.S. Trustee at 2010.

1 The Ad Hoc Borrowers Group joined the objection of the U.S.
2 Trustee at ECF 2013. Mr. Frishberg filed his objection at
3 ECF 2014. I perhaps have left out some. I thought some of
4 the state regulators also opposed, but it -- so Mr. Koenig,
5 the first time that I had an opportunity to glance -- and
6 that's all it was, it was a glance -- at the proposed plan
7 structure, the outline, was while we were having this
8 hearing. I had it open on a separate screen in front of me.

9 I think that -- I'll certainly give others a
10 chance to speak now, but I think that every party who filed
11 an objection to the extension of exclusivity is entitled to
12 an opportunity to review what was just filed. I greatly
13 appreciate the work of the Debtors and the Committee in
14 particular. The Committee certainly previewed that they
15 were still hopeful. They filed their objection but were
16 still hopeful that by the time of the hearing there would be
17 further progress. Well, there is.

18 And by what I would -- I do want to hear from
19 anyone else who wants to speak to this issue. My
20 inclination is to, to the extent necessary, give you a
21 bridge order on exclusivity to the next hearing, but give
22 those who did file objections an opportunity to review
23 information that was provided today, information in the, you
24 know, the slide deck that was attached. I just, as I say,
25 only had the briefest opportunity to look at it as this

1 hearing was going. But -- so I'm certainly pleased. I do
2 consider this -- on the face of it, it appears to be good
3 progress.

4 I think, you know, Mr. Kwasteniet has indicated
5 there's a lot of work to be done. Well, that's -- that is
6 part of the normal process. So first let me hear from the
7 Committee and see whether they want to be heard on this.
8 Mr. Colodny, do you want to be heard on this?

9 MR. COLODNY: Dan Colodny from White and Case on
10 behalf of the Committee. I agree with Mr. Koenig, and I
11 think we -- as you noted, we previewed in our objection that
12 we were working hard, and we were working hard up until the
13 last minute. What was negotiated with the Debtors as part
14 of exclusivity were -- I would call them check-ins. You
15 know, milestones where we have to have a plan term sheet,
16 where we have to have a disclosure statement on file, which
17 I think is going to be a big list here based off the nature
18 of the assets.

19 The financials of the Debtor, projections to the
20 new company, new disclosure statements can be very important
21 to everybody understanding what the plan proposes. So while
22 those milestones are set (indiscernible), we can come in on
23 an expedited basis if they're not hit to request Your Honor
24 to lift that exclusivity. Obviously everyone would reserve
25 all of their rights with respect to any such motion, but our

1 intention was that those would not be paper tigers but would
2 instead be (indiscernible) milestones to hit and
3 consequences that occur if they don't. With that, Your
4 Honor, our objection is resolved. We think that we're
5 making good progress, and we think that the Debtors'
6 proposed timeline makes sense.

7 THE COURT: Ms. Cornell?

8 MS. CORNELL: Thank you, Your Honor. Shara
9 Cornell on behalf of the Office of the United States
10 Trustee. While we appreciate allegedly that some progress
11 has been made in this case, there's still a long way to go
12 before what's being described today becomes a plan. And I
13 mean that with a big P. There are a lot of issues with the
14 proposals, and we are, as Your Honor said, still evaluating.
15 But for example, the proposal references selling preference
16 claims in order to get votes for the plan. We have a lot of
17 questions about the regulation regarding the Debtors'
18 proposal and whether it is or could ever be feasible under
19 current laws.

20 Moreover, we have seen no discussion of how the
21 Debtors are going to get there, for example, with licensing.
22 And at the same time, a lot of these questions are the same
23 questions we have from the last hearing.

24 THE COURT: May I ask you this, Ms. Cornell?

25 MS. CORNELL: Sure.

1 THE COURT: Would you rather exclusivity end and
2 get 600,000 plans proposed?

3 MS. CORNELL: No, Your Honor. But I just want to
4 say I'll give you a little preface. You know, we've been
5 talking about --

6 THE COURT: I -- look, I do not underestimate the
7 difficult path ahead assuming that this proposed plan
8 structure moves forward. You raise -- and certainly an
9 exclusivity hearing is not the time to deal with disclosure
10 statement objections or plan objections. So all rights are
11 reserved on that but come back to the issue of -- I'm not
12 going -- put it this way. I'm not going to simply grant the
13 motion or extend exclusivity. I think everyone who has
14 filed objections is entitled to an opportunity to read and
15 review everything that got filed overnight and take that
16 into account.

17 Hopefully there will be able to be consensus to
18 allow this short runway of time to move forward. A -- I
19 don't think it's in anybody's interest for there to be a
20 free-for-all. And in theory that -- I mean, what the
21 Committee argued is they could be permitted if exclusivity
22 would end not at -- only as to them. I think before we get
23 there, let's see -- I want to give people an opportunity to
24 sort of digest. And if they want to file something, fine.
25 Express why they still think exclusivity should be

1 terminated, okay?

2 MS. CORNELL: I understand, Your Honor. What I
3 was going to say was that our suggestion -- and I think we
4 spoke with the Debtors about it yesterday was exactly Your
5 Honor's suggestion was to bridge this to the March 8th
6 hearing. Because as I understand it, they were also
7 discussing continuing the motions for a trustee until that
8 date. So that's why I wanted to give Your Honor a little
9 bit of background about where our office was going with our
10 investigation. But I can save that for later if Your Honor
11 prefers.

12 THE COURT: No, that's fine. Let me give other
13 people a chance to speak to this, okay?

14 MS. CORNELL: Thank you.

15 THE COURT: Who else wants to be heard? Ms.
16 Cordry?

17 MS. CORDRY: Yes, Your Honor. Thank you. I agree
18 with you. I actually read this motion very briefly a little
19 earlier this morning at about 7:15 when my cat woke me up,
20 and looked at my computer, and I said oh, my goodness. A
21 whole lot of new filings. So I've had a couple of hours to
22 look at it, and again --

23 THE COURT: It's a funny thing when hearings like
24 this are on the calendar. Sometimes what could be described
25 as progress immediately before the hearing.

1 MS. CORDRY: Right. And I will say I'm impressed
2 at the work ethic of the parties here. When I was working
3 on the GM case back in 2009, I thought it was impressive
4 that I was still dealing -- negotiating at 11:00 at night.
5 But I see these being filed at 1:30 in the morning, so that
6 is commendable. I would agree, again, that I think that the
7 bridge order would be helpful, especially if by that time
8 some of these milestones have started to be put into place.

9 We do still have a concern with the length of
10 time, the three months after a plan is put on the table. It
11 does seem a bit long to us. And we have one or two
12 substantive concerns with the particular order there.
13 There's a provision in there about reservation of rights to
14 the SEC to challenge the treatment of crypto tokens. We
15 think that should include the state governments as well.

16 I think though the other piece of this that we
17 would just like to emphasize, and I think again, the point
18 about exclusivity only the bridge order, there is a lot to
19 be done to be regulatory compliant. We very much appreciate
20 the numerous statements that have been made on the record
21 about the parties' intentions to do that and to become
22 compliant. There's a lot of work on that, and it's not
23 something that there's been a whole lot of discussion with
24 us. I won't say there's been no discussion between
25 ourselves and the Debtors, but it's not been anything

1 intensive at this point. It's not been really working
2 towards where this should go.

3 This morning was the first time we heard who the
4 plan sponsor would be and where they're going with this. So
5 we do think those are discussions that are going to need to
6 become intensive between the Debtor and our parties as well
7 to see if this is going to be a regulatory compliant and
8 feasible plan by the time they get to it. But we filed a
9 statement as opposed to an objection because when we first
10 were reading this, we did appreciate what the UCC was
11 essentially saying, which is it was time to fish or cut
12 bait. And it seems that they're trying to fish at this
13 point, so we hope that they will actually be able to pull a
14 plan out of the water in the next few weeks.

15 THE COURT: Okay. Thank you, Ms. Cordry. Ms.
16 Kovsky.

17 MS. KOVSKY-APAP: Thank you, Your Honor. Like you
18 I have not had much of an opportunity to review the Debtor's
19 presentation as to what a potential future plan might maybe
20 look like if lots of different things fall into place over
21 some future period of time subject, of course, to their
22 ability to request further extensions. And I certainly have
23 not had an opportunity to discuss this with my client group.
24 I will say at a glance I have very serious concerns about
25 what the Debtors are proposing. I understand that there's

1 going to be lots of further discussions, and you know, they
2 at this point don't even have a binding term sheet with the
3 proposed plan sponsor.

4 I was a little surprised at the Committee's last
5 filing on this at the first exclusivity extension was that
6 to the extent that the Debtors do not file an acceptable
7 plan by February 15th, the Committee was going to be
8 prepared to go forward and do so. So I am honestly a little
9 surprised and disappointed that we're here looking at, you
10 know, a further long road ahead of us.

11 THE COURT: Ms. Kovsky, would you prefer a free-
12 for-all?

13 MS. KOVSKY-APAP: Your Honor, what we had
14 suggested in our proposed -- in our objection to exclusivity
15 was that it should be modified to permit the Committee and
16 any ad hoc committee represented by counsel in the case to
17 file an alternative plan. I don't think that any of the ad
18 hoc committees in this case have behaved in an irresponsible
19 manner or in anything that would be approaching a free-for-
20 all.

21 THE COURT: All right. I think -- well, we'll
22 leave that. I think we're headed towards a bridge order to
23 get us to the March hearing, but let me -- Ms. Rood?

24 MS. ROOD: Thank you, Your Honor. Jennifer Rood
25 from Vermont Department of Financial Regulation. I'd echo

1 all of the comments of Ms. Cordry and just point out that
2 there hasn't been, despite what the UCC said, there's been
3 one phone call several months ago and no outreach at all to
4 regulators to give us a chance to -- you know, we have the
5 understanding that they would tell us in confidential terms
6 who the counterparty was going to be, and that never
7 happened.

8 The process of either securities registration or
9 money transmission registration, licensure, takes months.
10 It's not something that happens fast. So, they really need
11 to fit factor that into their planning. I think exclusivity
12 -- I mean a bridge order sounds good, but exclusivity,
13 beyond that, should be very limited. We're reaching the
14 point where, you know, they either need to get this done or
15 we need to liquidate. I don't want a free for all, but
16 we're just driving along, burning a lot of money.

17 And the other thing that hasn't really been
18 addressed, is the fact the Debtors, back at the last
19 hearing, or one of the last hearings, may have had to do
20 with the stablecoin. They indicated they have enough
21 liquidity to get through, maybe, March. And they're
22 proposing now to keep this case running through June, and
23 that's assuming that there aren't any further extensions,
24 which is not an assumption we can make.

25 So, I don't understand how this case continues to

1 move forward just on the, running itself on liquidity for
2 the time that they're proposing to keep going.

3 THE COURT: All right. Mr. Adler? I'm going down
4 the names on the -- with hands raised, in the order. They
5 may not be the same on your screen, but I'm going in the
6 order in which I'm seeing hands raised. Mr. Adler?

7 MR. ADLER: Good morning. Again, Your Honor,
8 David Adler on behalf of the Ad Hoc Group of Bars. As I
9 stated earlier, we received a framework for a resolution
10 from the Debtors last week, with a lot of issues that need
11 to be ironed out, but we are in favor of bridge order. We
12 think that makes the most amount of sense, because it will
13 allow us to vet these issues with the group, and interact
14 with the plan sponsor, as I mentioned earlier. And I think
15 that Your Honor's suggestion about a bridge order until the
16 next hearing, is agreeable to the Ad Hoc Committee.

17 THE COURT: Thank you, Mr. Adler. Ms. Milligan?

18 MS. MILLIGAN: Hi, good morning, Your Honor. Can
19 you hear me?

20 THE COURT: Yes, I can.

21 MS. MILLIGAN: Thank you for allowing me to speak
22 this morning. I echo the comments from Ms. Cordry and Ms.
23 Rood. Texas regulators filed a joinder. One suggestion,
24 because I don't want to repeat everything; we do have
25 concerns with liquidity. We have had minimal contact from

1 the Debtor and the Committee about this plan. We're
2 learning all of this today. So, we do agree with the Court
3 a far as a bridge order to March 8.

4 My suggestion, respectfully, would be that in the
5 interim, Debtor and the Committee reach out to the
6 regulators and have discussions about what they're
7 proposing, because we're all leaning about this today. And
8 as Ms. Rood said, these things take time. And we want to be
9 able to have a position on where this goes, if it can go
10 forward. So, thank you, Your Honor.

11 THE COURT: Thank you, Ms. Milligan. One
12 additional comment I'd make is, you know, in many of my
13 cases, I see a proposed plan and disclosure statement filed
14 before exclusivity expires. And frankly, it's a
15 placeholder. In any complex case, there's lots of issues
16 that are going to have to be negotiated in a plan that,
17 hopefully, ultimately, will be confirmed; may bear only a
18 passing resemblance to the placeholder that was filed. So,
19 we don't have a plan; we have an outline, essentially, in a
20 series of slides. It's progress. How much progress, that's
21 not for me to say at this stage. I think that the
22 alternatives are not particularly attractive to me. I think
23 what the Committee proposed is exclusivity, be terminated to
24 permit the Committee and only the Committee to file a
25 proposed plan. And they talked a little bit in their

1 opposition about what that might be, a liquidation plan.

2 But I think, for today, I think I'm going to give
3 anybody else with their hand raised a chance to speak to it.
4 But what I'm inclined to do is, as I've said, is I'll set
5 another deadline for supplemental objections or support but
6 put this over to the March 8 hearing. But let me hear from
7 Mr. Mendelson, you're next on my screen.

8 MR. MENDELSON: Thank you, Your Honor, thank you
9 for the Court's time. At the start -- first of all, a US
10 citizen, a resident of the state of Florida -- at the start
11 of this process, on day one, you said that the Court's major
12 responsibility is to be fair, is to treat everyone fair
13 during this process; which I certainly appreciate.

14 Today, I guess within the first two minutes of the
15 Court, there was a mention of a custody settlement and other
16 settlements. These settlements --

17 THE COURT: There's no settlement until I approve
18 a settlement, Mr. Mendelson.

19 MR. MENDELSON: Good to hear, Your Honor.

20 THE COURT: I'll just say, the usual process is to
21 try and get consensual resolution of issues like that. But
22 it still requires Court approval and it gives parties an
23 interest and opportunity to object. So, if, when you see
24 it, if you have issues you're going to raise with it, you'll
25 have an opportunity to do that. I don't know whether that

1 raises, that addresses your concern, but I didn't mean to
2 interrupt you. Go ahead.

3 MR. MENDELSON: No worries, and I don't mind your
4 interruption, of course. I want to kind of like reiterate
5 what Ms. Cornell said, which is that these settlements,
6 whether it's custody or other, seems to be contingent upon
7 the settlement classes not being a part of a potential
8 equity in the new company, or in potential litigation claims
9 in the future. I just don't see how that would be a fair or
10 equitable settlement or decision, without us knowing the
11 exact amount that -- I guess it's the estate, or the UCC, is
12 going to pursue against retail clawbacks. That has been the
13 elephant in the room this morning. And I haven't heard any
14 mention of, what is the minimum threshold for retail
15 clawbacks. So, can we get some resolution on that today?
16 What is the minimum threshold?

17 THE COURT: Today is not the time to get a
18 resolution to that; this has got to move forward. Fair
19 questions that you're asking, though, okay.

20 MR. MENDELSON: Appreciate it. Thank you for your
21 time.

22 THE COURT: Mr. Herman?

23 MR. HERMAN: Thank you, Your Honor. Emanuel
24 Herman, pro se. I commend the professionals at Kirkland for
25 pulling another late night, and their work ethic. That

1 said, I've been digesting the outline that was submitted.
2 And like others, I could use more time to review what the
3 Debtors submitted. So, a bridge order would be good, and it
4 would resolve my objection on exclusivity. After a quick
5 review, I'm cautiously optimistic that the plan put forward,
6 or the outline, as you said, Your Honor, can be a starting
7 point, with lots of changes for getting out of chapter 11.

8 Mr. Frishberg and I met with the UCC this morning.
9 We had a productive conversation. But I'm still digesting
10 anything. I wouldn't prefer a free-for-all. I think, I do
11 think, you know, ultimately, permitting the Committee and Ad
12 Hoc Committees to file alternative plans, and having,
13 potentially, a choice between two or three plans makes
14 sense. I think if earn customers wanted to put forward a
15 plan, we could hire a lawyer to do that. Obviously, we're
16 not going to put forward viable plans if there's, you know,
17 hundreds of plans filed.

18 But in any case, I don't strongly object to
19 addressing this on March 8, versus today.

20 THE COURT: Thank you, Mr. Herman. Mr. Bernstein?

21 MR. BERNSTEIN: Good morning, Your Honor, Jeffrey
22 Bernstein, McElroy Deutsch Mulvaney & Carpenter for the New
23 Jersey Bureau of Securities. We think that the March 8
24 bridge order concept is sensible approach, given the
25 information filed overnight. And we hope that this period

1 of time will be met with a robust engagement, so that we can
2 get to an endpoint, and so that we can serve the function of
3 providing the best outcome for the accountholders, the
4 creditors here. And that's what the process, in large
5 measure, is about. And we look forward to that opportunity,
6 and to get to an endpoint that does as much as possible to
7 contain the ongoing costs, so that the holders, the
8 accountholders, can do as best as possible. Thank you, Your
9 Honor.

10 THE COURT: Thank you, Mr. Bernstein. Mr.
11 Frishberg.

12 MR. FRISHBERG: Thank you, Your Honor. Daniel
13 Frishberg, pro se. I do have a lot of the same concerns
14 everybody else voiced, so I will not voice the again.

15 A short-term bridge order is a good idea. Again,
16 reserve all rights. But I do have concerns that the Debtors
17 may attempt to use this bridge order and then, potentially,
18 further bridge orders with -- I think it was described as a
19 fish-and-bait, to drag this out for a while. I don't think
20 anyone has been advocating for a free for all, and I don't
21 think anybody wants a free for all. And I do have major
22 concerns about waiving clawbacks as part of a settlement.
23 Thank you, Your Honor.

24 THE COURT: Thank you, Mr. Frishberg. Does
25 anybody else wish to be heard before we move on? All right,

1 I'm going to ... we're going to put this on the calendar.
2 I'll enter a bridge order, submit an appropriate bridge
3 order; vet the form of the order with the Committee and the
4 US Trustee; it's not complicated. We'll put it on the
5 calendar for Wednesday, March 8. I'm going to set an
6 objection response deadline of 5:00 PM, March 1, so that
7 will give people a time to review what's been filed so far,
8 for the lawyers to talk with your constituencies, your
9 clients. And let's see where we get to. So, I'm going to
10 set 5:00 PM, Wednesday, March 8, one week before the hearing
11 on March 8, as the deadline for any further submissions.

12 All right?

13 Ezra Serrur, I see your hand raised. Do you wish
14 to be heard.

15 MR. SERRUR: Yes, hi. Thanks Your Honor. I just
16 had a very quick question related to the custody asset
17 withdrawal process that began this morning. It just relates
18 to four pure custody accounts that were listed on the
19 schedule. For those that were transferred according to, you
20 know, Rule 3001, to another party, such as a fund, how will
21 the KYC process work in that context? The filing on the
22 docket wasn't entirely clear on that point. And I think it
23 would be helpful if there was some clarity on, you know, how
24 that would work in the context of a transferred claim and
25 whether the new owner of that claim can, you know, engage in

1 the KYC process.

2 THE COURT: Anybody -- the Debtor want to address
3 that?

4 MR. KOENIG: Your Honor, Chris Koenig, yes, I can
5 address that.

6 THE COURT: Go ahead, Mr. Koenig.

7 MR. KOENIG: The relationship between Celsius and
8 the customers, the original holder of the claim, we have all
9 the data on that; that person has the app login, has the
10 account, has the password. What's going to happen is the
11 original account holder should complete the KYC, should
12 complete the white listing, should withdraw, and then should
13 take the, you know -- then it's between the seller of the
14 claim and the buyer of the claim to transfer the proceeds.
15 Celsius doesn't have a relationship with the buyer. The
16 Claimant, frankly, doesn't have a method to, you know,
17 establish a new relationship at this point.

18 So, what we said in the notice is, you know, while
19 we recognize that there were some 3001(e)s that were filed,
20 that the original claim holder should complete the KYC,
21 should withdraw the claim and then, you know, in accordance
22 with their purchase agreement, presumably pay that amount
23 over to the claims buyer.

24 THE COURT: Thank you, Mr. Koenig. All right,
25 let's move on, on the agenda. The next item on the Agenda,

1 number seven, is the motion to appoint a chapter 11 trustee,
2 filed by Mr. Herman and Mr. Frishberg. It's ECF Docket No.
3 1975. Mr. Herman or MR. Frishberg, do one of you want to be
4 heard, or both of you, frankly?

5 MR. FRISHBERG: Yes. Hello, Your Honor. Daniel
6 Frishberg, pro se again.

7 THE COURT: Go ahead.

8 MR. FRISHBERG: If it's all right, I'd like to
9 take a moment to explain the motion and why we filed it, and
10 what we are hoping to accomplish with it. And then, Mr.
11 Herman will have a few points of his own to make and will
12 discuss the discovery issues that led to the status
13 conference instead of it being an actual motion. Is that
14 okay?

15 THE COURT: Yes, go ahead, Mr. Frishberg.

16 MR. FRISHBERG: Thank you. I appreciate there has
17 been some progress made, but there are still some very major
18 concerns that we have about governance at Celsius and how
19 these governance issues impact winning the best interest of
20 creditors. I hope to find consensual resolution to this
21 motion, but we are not ready at this time to withdraw the
22 motion. Mr. Herman and I filed this motion for a chapter 11
23 trustee, because there are serious grounds for a trustee.
24 There are some major questions about who appointed the
25 committee members, as well as other members of the current

1 management (indiscernible) Ferraro.

2 I am concerned about what it will mean to the
3 details of any final plan, such as potential releases.
4 David Barse, who was presumably appointed by, potentially,
5 Alex Mashinsky, still has a veto power and major influence
6 over any final plan, and what will be varied in the final
7 plan details, such (indiscernible). As the ombudsman said,
8 the devil is in the details. Over 350 creditors so far have
9 signed a letter in favor of a chapter 11 trustee.

10 We have not filed this letter yet, since the
11 motion is now scheduled to be heard on March 8. It's not
12 quite as many as who signed the exclusivity letter, but
13 we've only been circulating it for a short amount of time.
14 This shows we are not alone in having the great concerns
15 around the Debtors. We hope that the Debtors will finally
16 have a town hall and actually interact with creditors and
17 involve creditors in the restructuring, as well as claims
18 such as the ones that had been laid out in the UCC's motion,
19 or (indiscernible) motion, and address beyond that instead
20 of just those, I believe, eight individuals and their shell
21 companies. And it will hopefully address the massive
22 conflict of interest within the special committee and the
23 releases for insiders and other members of the management,
24 beyond what is addressed in the complaint filed with the
25 UCC.

1 Thank you, Your Honor. I will now hand over the
2 virtual podium to Mr. Herman.

3 THE COURT: Mr. Herman, go ahead.

4 MR. HERMAN: Thank you, Your Honor. For the
5 record, this is Emanuel Herman, pro se, Celsius creditor. I
6 just wanted to add a few more context points, and then I'll
7 move onto the discovery issues. So, you know, obviously, we
8 didn't know exactly what would be proposed at the time we
9 filed the motion, in terms of a plan. And then, frankly,
10 they aren't really very relevant. So, whether there are
11 grounds for a trustee, what is relevant and --

12 THE COURT: Mr. Herman, do you have any idea of
13 what happens if a chapter 11 trustee is appointed now, to
14 this process? You may be sometime next year when there's
15 actual progress in this case. So, I may overstate it a
16 little bit, but not by much. The appointment of a chapter
17 11 trustee will set this case back to about day one or two.

18 MR. HERMAN: Yes, Your Honor.

19 THE COURT: That doesn't mean you shouldn't make
20 your motion; you've made your motion. But I just, you know,
21 I'm not sure that you fully understand what the consequences
22 would be of a chapter 11 trustee being appointed now.

23 MR. HERMAN: Thank you, Your Honor. I appreciate
24 that, and I hear that. And you know, we understand that
25 it's an extreme remedy, and certainly, at the time we filed

1 the motion, it made sense. I think it still makes sense to
2 continue discussing this motion and pursuing it for the time
3 being. You know, there are still some unresolved issues
4 around maximizing recoveries for customers and ensuring --
5 really, like we did not -- I just want to be totally clear;
6 we didn't file this, you know, because we didn't like a
7 plan, or something like that. The concern is around
8 maximizing recoveries for customers and ensuring that
9 conflicts of interest have minimal to no influence on any
10 final plan.

11 So, in particular, with a two-seat special
12 committee, David Barse, who I've been told is a long-time
13 friend of Alex Mashinsky, has veto power over any
14 restructuring proposal; I assume both votes are needed, in
15 the final points that go into any plan. So, it was great to
16 see a start to the accountability yesterday, with the UCC's
17 filing. I'm cautiously optimistic progress is being made.

18 THE COURT: Mr. Herman, Mr. Barse, whether under
19 the existing structure he would have veto or not, if the
20 Committee were permitted to file a plan, Mr. Barse would
21 have no veto power whatsoever. What I still would hope is
22 that the Committee and the Debtors would continue their work
23 and come up with a plan that would be proposed, by the
24 Committee and the Debtor. It is certainly possible for the
25 Court to permit the Committee to file a plan. And that

1 won't give anybody in management a veto. So, I think -- I
2 understand your concern. I have no reason to believe that
3 Mr. Barse or anyone else is conflicted. I understand that
4 statements have been made about his long-time friendship
5 with Mashinsky. If it was that, I'll assume that to be true
6 for now. But that would not alter -- you know, he has a
7 fiduciary duty in terms of the management of the company.
8 And there is a Committee which, I know some creditors have
9 questioned the activity of the counsel for the Committee. I
10 think they've been performing admirably, frankly. But
11 that's not for today either.

12 So, I guess the only point I would make, Mr.
13 Herman, is we're either going to get to a plan that's
14 jointly proposed; if there can't be, I would have been ready
15 to rule on the exclusivity motion today. We're going to
16 move forward. I view the -- we'll call it a plan outline.
17 I'm not quite sure what to call it. I haven't had a chance
18 to study it completely. I'm sure, I doubt whether you or
19 your colleagues have had a chance to really study it
20 correctly. It's not the final word. It's typical when a
21 plan is proposed in a complex case, there is plan
22 negotiation and adjustments made. And what's filed as a
23 plan, the first day one filed, is not necessarily what we
24 end up with at the end.

25 I have said from the start, I mean my goal here is

1 an outcome, whatever form it takes, that will maximize the
2 recovery for all of the creditors. But I interrupted you.
3 Go ahead, Mr. Herman.

4 MR. HERMAN: No, please. Thank you, Your Honor.
5 I appreciate the context and the background. And I guess I
6 can, you know, I can move onto discovery while saying,
7 again, just reiterating, we really would like to resolve
8 this consensually. And, you know, we understand -- like I
9 understand that it would not be -- that there are ... it would
10 not be ideal if, you know, if there's a way to get a plan
11 passed that doesn't -- that deals with these issues in
12 another way. Like, for example, Your Honor, you pointed out
13 that the UCC could propose a plan if the Special Committee
14 were to stand in the way of -- you know, if there were
15 issues around, say, releases or other things that the Debtor
16 and the UCC and other parties couldn't resolve.

17 So, again, I'm hoping for a consensual resolution.
18 That said, on discovery, I'll move onto that.

19 THE COURT: Go ahead.

20 MR. HERMAN: We tried to consolidate our discovery
21 requests all in one place and our proposed witness and
22 evidence list. I think we could probably further narrow
23 that. We listed some of the documents that we would enter
24 into evidence. Some of them we don't have, you know, to
25 start one limited request is to get corporate records and

1 other information about -- and this was actually mentioned --
2 - there's a good filing by the states, that you referenced
3 earlier in this hearing. It's mentioned in that filing as
4 well, that one limited request is to get corporate records
5 about who appointed Mr. Barse, Mr. Carr and Mr. Ferraro to
6 their current roles.

7 Then, another request is if, you know, well,
8 that's relevant to 1104(e), I suppose, in any case. And
9 then another request is documents that were already used in
10 the examiner's report, which I don't think would cost the
11 estate much, or any net money. Because we contacted the
12 Examiner's Office and were told they were aiming to
13 eventually release these documents anyway, but they're not
14 ready to do so yet. So, presumably, Kirkland will be
15 reviewing these for eventual publication. They're
16 referenced in the Examiner Report, you know, which I
17 understand is hearsay. So, then we were asking for some of
18 the primary course.

19 THE COURT: Well, they would still be hearsay. It
20 doesn't become not hearsay when you get them from the
21 Examiner. The Examiner didn't -- Examiner conducted
22 interviews; it's all hearsay. The documents have to be
23 authenticated. It doesn't create admissible evidence just
24 because the Examiner turns them over to you.

25 MR. HERMAN: Understood. So, then we would need,

1 essentially, declarations from like Kirkland or something to
2 go with them, is what you're saying.

3 THE COURT: Well, that wouldn't necessarily do it
4 either, but ...

5 MR. HERMAN: Okay.

6 THE COURT: Anything else you want to say on
7 discovery?

8 MR. HERMAN: You know, finally, we ask for some
9 depositions. I think at this point, David Barse is who we'd
10 want to hear from. I understand, you know, the other
11 Special Committee member, Mr. Carr, filed a declaration. I
12 don't think Daniel or I are actually questioning his
13 qualifications or his bankruptcy experience or anything.
14 Nor do we believe that he had any kind of relationship with
15 Alex Mashinsky. So, that's not really an issue that we had;
16 it was with Mr. Barse.

17 THE COURT: Mr. Koenig, do you want to be heard?

18 MR. KOENIG: I do, Your Honor. Thank you. Chris
19 Koenig. First, before getting to discovery, I need to take
20 a moment, because there's base speculation by the Movants
21 about the independence of the Special Committee, and the
22 actual evidence in the record that was submitted as part of
23 -- we found two declarations: one of Mr. Ferraro at Docket
24 2046; one of Mr. Carr, one of the Special Committee members,
25 at 2047. All of the evidence makes clear the integrity and

1 the robust -- the integrity of the Special Committee
2 members, the robustness of our process. Both of the Special
3 Committee members have a long experience serving on boards
4 in the restructuring capacity. They served on many other
5 distressed companies; currently serve on other distressed
6 companies. They are individuals of the greatest integrity
7 and have cooperated through these cases with the Committee
8 and have worked to maximize value for all constituents.

9 And just two very quick points: The Movants
10 suggest that Mr. Barse has a relationship with Mr.
11 Mashinsky. The Special Committee authorized the termination
12 of Mr. Mashinsky back in September, which we explained in
13 the declaration of Mr. Carr. The Special Committee recently
14 signed off on the stipulation that you heard about at the
15 beginning of this hearing, which assigned claims against Mr.
16 Mashinsky, to a litigation trust that will be pursued by
17 appointees of the Creditors Committee.

18 So, just to be clear, all of the evidence in the
19 record makes clear that these two individuals are of the
20 highest integrity, have absolutely no conflicts of interest
21 with Mr. Mashinsky, and you know, we'll certainly comply
22 with proper discovery requests and go through the process.
23 But all of the facts, the actual facts, the actual evidence,
24 make clear that there is no issue here, and we'll certainly
25 let the facts bear that out over time. But I needed to say

1 that for the record, given the comments that were made.

2 THE COURT: All right. Have you considered filing
3 a declaration for Mr. Barse as well?

4 MR. KOENIG: Your Honor, we'd certain consider it,
5 given the comments that were made this morning. We need to
6 speak to our client.

7 THE COURT: Speak to your client about it, okay.
8 All right. Does anybody from the Committee want to be
9 heard? Mr. Colodny? You're muted.

10 MR. COLODNY: Sorry. Muted on my phone and now on
11 the video. Your Honor, as part of the first exclusivity, we
12 conducted some discovery into the Special Committee and how
13 they were handling the case. I think that discovery came
14 away with a clean bill of health at this time. I think that
15 we agree with Mr. Koenig that their actions thus far have
16 spoken for themselves. They have read the contract. I
17 think they've fully -- at least in our view; I'm sure not in
18 the preferred equity's view -- faithfully observed them and
19 taken positions that we believe are consistent with the
20 plain language of the contract. We've been meeting with
21 them, we've moved forward. We don't have any reason, at
22 this time, to question their integrity. Other than that,
23 you know, I would just note that the stipulation between the
24 Committee and the Debtors provide: one, for the public
25 disclosure of our complaint, which was filed yesterday, and

1 also provides that if the order is entered by the Court, a
2 litigation trust will be set up; those causes of action and
3 any other causes of action against the Defendant, and other
4 causes of action against other prospective defendants that
5 are agreed to by the Committee and the Debtors, will go into
6 that trust. And if we have any disputes about that, we'll
7 come before Your Honor and have those disputes in a public
8 forum.

9 To me, that's how bankruptcy is supposed to work.
10 We have gotten a long ways in this case. I think that our
11 objection to the trustee motion was aimed at exactly what
12 Your Honor pointed out; if the trustee were appointed at
13 this time, we think it would undo all of the progress that
14 has been made; it would have an extreme negative effect on
15 the recovery for creditors, and that's not something that
16 neither me or my constituency are interested in at this
17 time.

18 THE COURT: All right, thank you, Mr. Colodny.
19 There's one more hand raised, Mr. Khanuja?

20 MR. KHANUJA: Thank you, Your Honor. Can you hear
21 me fine?

22 THE COURT: Yes, I can.

23 MR. KHANUJA: Your Honor, I've made a declaration
24 in support of the Trustee motion. So, I've made many of the
25 points that I'm not going to repeat them here. But in light

1 of the plan that has come forward, and in light of what you
2 mentioned earlier today, like, you know, appointment of a
3 trustee, how it can potentially bring it to day one or two.
4 You know, our understanding was different. We thought a
5 seamless transition of knowledge may happen, the trustee
6 appointment, so it won't go back to day one or two. But if
7 that's the case, then we will withdraw support.

8 Having said that, with regards to the plan, and
9 with regards to some of the concerns that were raised by
10 Daniel Frishberg and Emanuel Herman, and in my support
11 letter as well, (indiscernible). David Barse, for example,
12 has an equity stake in Celsius, which hasn't been pointed
13 out. Now, all of these create a conflict of interest, which
14 we have already seen in many of the scenarios in this.

15 For example, the Debtors' plan which was proposed
16 today, there is a possibility that preserving some value for
17 Celsius (indiscernible), and for equity holders, was a
18 primary consideration (indiscernible) current plan. We
19 don't know whether the current plan is better, or how it
20 compares against liquidation or some of the other plans that
21 were submitted months back. So, all of these must be
22 brought to light, I would say.

23 THE COURT: Thank you very much, Mr. Khanuja. All
24 right, let me say this. For those of you who've read the
25 legal briefs that were filed in connection with this motion,

1 there were references to one of my prior decisions in, In re
2 1031 Tax Group. And the whole history was not laid out
3 there. The initial motion for the appointment of a chapter
4 11 trustee, I denied without prejudice. Perhaps a month or
5 six weeks later, when the situation and the case had
6 changed, and there was a renewed motion for the appointment
7 of a trustee, I granted the motion, as in the interest of
8 creditors in the estate.

9 I'm going to deny the chapter 11 trustee motion,
10 which is filed as ECF document 1975, without prejudice. I
11 think with the developments that, at least carry us forward
12 to the March 8, March 7 hearing -- March 8, I guess, March 8
13 hearing, it's progress. There's a long way to go. I
14 commend the Debtors' counsel and the Committee's counsel in
15 their efforts to reach out with a proposed plan sponsor to
16 manage the NewCo. It's progress. There's a lot to be done.

17 So, one of the things, Mr. Herman, that I try to
18 focus on -- you know, the Examiner's Report is hearsay. The
19 documents the Examiner has, for the most part, will be
20 hearsay. But I've sort of asked myself the question, if
21 everything is reported in the Examiner's Report were
22 established in a non-hearsay fashion, as evidence in the
23 case, would that support justify the appointment of a
24 trustee under 1104(a)(1)? And my answer to that was no.

25 The Examiner's Report is extremely thorough, and I

1 think she really did an excellent job. It's obviously very
2 lengthy. There clearly were a lot of problems at Celsius.
3 It will be for a litigation trust, and perhaps the US
4 Attorney's Office, to deal with issues of misconduct that
5 went on. But the issue for today is whether or not a new
6 fiduciary, a chapter 11 trustee, should be appointed.

7 My conclusion is, on the record today, the answer
8 to that is no. So, I'm denying the motion without
9 prejudice. Things could change, Mr. Herman, that would lead
10 me to change my view as to whether or not a trustee would be
11 in the best interest of the estate. I think here, I'm
12 hopeful that the Debtors and the Committee, with a lot of
13 input from other ad hoc committees and individuals, will be
14 able to come up with a consensual form of the plan.

15 I take Ms. Cordy and Ms. Milligan's comments, and
16 Ms. Rood's comments; there clearly is a lot of work, and
17 I've said this before at other hearings, a lot of that has
18 to be done with the regulators, to assure that whatever the
19 structure is going forward, is regulatory compliant. I
20 consider that to be very important.

21 So, for today at least, the chapter 11 trustee
22 motion is denied without prejudice. In my view, it moots
23 the issue of the discovery requests that are made for now.
24 I do think Mr. Koenig, it would be helpful, but I'm not
25 ordering it, that a declaration from Mr. Barse also be filed

1 on a record. It would, hopefully, help clear some of the
2 air, okay.

3 MR. KOENIG: Understood, Your Honor. Thank you.

4 THE COURT: All right.

5 MR. HERMAN: Thank you, Your Honor.

6 THE COURT: Let's move onto the next item on the
7 agenda, and that is the issue of whether the US Trustee
8 ought to have the Court enter an order to show cause, and
9 why the Debtors could not retain Willis Towers Watson. I
10 wanted to have a discussion today about what are the issues
11 regarding the retention, and if necessary, work out a
12 schedule for a motion. Ms. Cornell, do you want to start?

13 MS. CORNELL: Thank you, Your Honor. Shara
14 Cornell for the Office of the United States Trustee. I
15 should let Your Honor know that myself and the counsel for
16 the Debtors did have a meet and confer yesterday regarding a
17 scheduling.

18 THE COURT: Okay.

19 MS. CORNELL: If you'd like us to share that with
20 you --

21 THE COURT: Yeah, go ahead, please. Well, go
22 ahead and share it for the record, for everybody.

23 MS. CORNELL: We've decided that the order can be
24 entered, but that responses would be due on March 1, with a
25 hearing date on March 8, and if we have a reply on March 7.

1 And Mr. Koenig can correct me if I'm wrong.

2 MR. KOENIG: Your Honor, Chris Koenig. Ms.
3 Cornell is representing accurately. We discussed yesterday,
4 after she filed a motion, we're going to continue to discuss
5 with her office, but we'll file whatever we file by March 1.

6 THE COURT: Educate me why, because I've had
7 numerous cases with KEIPs and KERPs and I don't know whether
8 Willis Tower was the professional engaged, but in every one
9 of those cases, there was a retention application that was
10 approved. Why no retention application here?

11 MR. KOENIG: Your Honor, again, Chris Koenig. So,
12 actually, maybe your experience has been different, but we
13 searched our records and searched Willis Towers in
14 particular. We found one case in the Ninth Circuit where
15 the KERP advisor or the KIEP advisor was retained. The
16 position has been that they're not a professional within the
17 meaning of Section 327. They're more like an expert
18 witness, Your Honor. Certainly, that's the way that we've
19 been proceeding through these cases, consistent with our
20 practice in other matters. Again, after Ms. Cornell raised
21 the issue, we search our records to make sure that what we
22 were doing was consistent with practice elsewhere.

23 THE COURT: Are there any reported decisions that
24 support that, that I could look at?

25 MR. KOENIG: Your Honor, I don't think that the

1 issue has been squarely presented, of whether the KERP
2 advisor, or the employee compensation advisor is a
3 professional within the meaning of section 327, but we'll
4 continue to look at it.

5 THE COURT: Maybe you prevail in the end of the
6 day, and I conclude that they don't have to be retained.
7 But you may not. Why don't you just file a ... why are you or
8 they unwilling to file a -- to try and resolve this through
9 a retention application, that usually gets negotiated out
10 with the US Trustee, and becomes a nonissue.

11 MR. KOENIG: Your Honor, we're certainly amenable
12 to having those conversations --

13 THE COURT: Have you had that conversation? I
14 mean, it's late in the day already. I can just tell you, if
15 you and Willis loses this issue, this far into the case, I
16 have at least one case where I required an attorney to
17 disgorge all the fees that he had received, because he
18 hadn't been retained. So, the stakes are more than just
19 whether they can go forward or not. If I conclude that they
20 were required to be retained -- and maybe I'm wrong, okay.
21 That's why I asked were there any reported decisions. The
22 consequences -- I was surprised when I read the briefing
23 about how much money they had been paid post-petition, for
24 this work. And do they want to be in a position where they
25 might have to disgorge all of that? But you can decide.

1 I'm not deciding the issue, okay. I was just surprised that
2 it's gotten to this point.

3 MR. KOENIG: We understand, Your Honor, and I'm
4 joined by counsel to Willis Towers Watson, who's on the
5 phone, in case he wants to make any remarks as well.

6 MR. MURLEY: Good afternoon, Your Honor, Luke
7 Murley, of Saul Ewing, on behalf of Willis Towers Watson.
8 In answer to Your Honor's question, we think we do need to
9 have a discussion with both the Debtors and the US Trustee,
10 about what the filing will be, and on all the issues. But
11 to give Your Honor some context, earlier in the case, the US
12 Trustee sought 2004 discovery. We've produced voluntarily,
13 but we haven't yet had a discussion with the US Trustee
14 regarding their recent filing, but we intend to.

15 THE COURT: Your Honor, Mr. Murley, all I can say,
16 there are so many issues in this Celsius case, I can't
17 believe this is one that you all want to press. If you do,
18 fine, okay. So, submit a revised order and I'll sign it.
19 You've agreed on the schedule. That's fine. Perhaps you
20 could resolve this without the necessity of going forward,
21 with the hearing on March 8.

22 MR. MURLEY: Thank you, Your Honor.

23 MR. KOENIG: Thank you.

24 THE COURT: All right. Mr. Koenig, what else do
25 we have for today?

1 MR. KOENIG: Your Honor, up next is the status
2 conference on the custody withhold, phase two litigation.
3 So, let me start the status conference with some good news;
4 that we've reached an agreement in principal with the ad hoc
5 group of custodial account holders. We need to turn that
6 into a formal settlement motion, pursuant to bankruptcy rule
7 9019, file it on the docket, notice it for a hearing, allow
8 people time to review and object and have a hearing. But
9 just wanted to outline the deal, just very quickly, in
10 principle. And of course, you know, the binding terms will
11 be set forth in a 9019 motion.

12 The agreement would allow each and every custody
13 account holder the option to elect to participate in the
14 settlement, or not. If they elect to participate in the
15 settlement and settle the outstanding preference claims that
16 the estate has against the custody holder, they will receive
17 a total of 72.5 percent of their allowed custody claims over
18 time. I'll come back to the overtime part in a moment. And
19 if they settle, it resolves all claims between the parties
20 relating to the custody claims; the estate's claims against
21 the custodial accountholders for the preference, for the
22 transfer from earn into custody, and whatever claims the
23 custodial accountholders have against the Debtors, for
24 repayment of the entire account balance that's due.

25 If they don't choose to settle, then an amount

1 will be set aside under the plan for non-settling custodial
2 accountholders to continue to litigate these issues. They
3 can, you know, litigate and seek more than 72.5 percent of
4 their claim back, and the estate or the litigation trustee
5 can sue them for a preference. So, this gives folks an
6 option. If they want to, you know, put an end to the
7 litigation that we've had for many months in these cases,
8 each and every holder will have that option. And if they
9 want to continue to try to press their rights, they can
10 continue to do so, subject, of course, to the estate and the
11 litigation trustee continuing to pursue their rights. So,
12 it gives folks an option.

13 I mentioned earlier that we overtime. What we're
14 contemplating is a two-step process. One is, when we file
15 the 9019, once the 9019 is approved, there would be a first
16 payment of half the amount and again, this is lawyer math,
17 which I referenced at last week's hearing, so it's a little
18 -- just to make sure I have the number right, it's 36.25,
19 half of the 72.5, would be paid upon approval of the
20 settlement and the remainder would be paid upon the
21 effective date of the Plan once the Plan is confirmed. So,
22 that -- we're very pleased to have been able to reach this --
23 this settlement in principal with the custodial account
24 holders. I'll turn to withhold in a moment, but that's the
25 update on custody and I'm happy for Mr. Ortiz to speak if

1 you would like.

2 THE COURT: Mr. Ortiz?

3 MR. ORTIZ: Good afternoon, Your Honor. So, Your
4 Honor, I think like any good settlement, I think all the
5 parties are just a little unhappy, which I think means that
6 we've hit the sweet spot and it's an appropriate settlement.
7 But critically, you know, should Your Honor approve the
8 settlement, it's going to start getting coins back to
9 holders right away and will dissolve the parties of the
10 uncertainty and expense of Phase 2, which we think is
11 important. That's ultimately -- we believe it's a very
12 positive outcome for our custody clients, for those
13 similarly situated and for the Chapter 11 cases and we will
14 certainly, during this process, be encouraging all custody
15 account holders, whether they're clients or not, to accept
16 because we do think it's a good outcome. And I'd just
17 note, you know, there's still some work to get it approved,
18 but we do appreciate the efforts of the Debtors and the
19 Committee to get to a consensual resolution that has us all
20 appropriately (indiscernible) and happy, Your Honor.

21 THE COURT: Let me ask you, Mr. Ortiz. So, you
22 represent the Ad Hoc Committee, you don't represent all of
23 the custody account holders. How is it contemplated that
24 this is going to work?

25 MR. ORTIZ: Well, I think the way it's

1 contemplated is that ultimately, every custody account
2 holder would have the option to opt in. One of the things
3 that's very helpful to the Debtors of having our group is,
4 they have a pretty good sense of, you know, what percentage
5 of people they're going to get. And I think, you know, what
6 we can do to be helpful, obviously, in the process, is in
7 the communications that will go out to be supportive and
8 help people understand why, at least from the perspective of
9 the custody account group, which again, isn't everybody, but
10 of that group, which is a fairly large percentage of it, why
11 we ultimately determined it was a good outcome.

12 THE COURT: Is it an opt-in procedure that's
13 anticipated?

14 MR. ORTIZ: That's correct, Your Honor.

15 THE COURT: Okay. All right. Mr. Koenig, go
16 ahead.

17 MR. KOENIG: Yeah, and just really briefly, it's a
18 good segue. So, the custody ad Hoc Group will agree with
19 standstill of the Phase 2 litigation as part of this
20 settlement as that we're not going to proceed with Phase 2
21 as the custody pending approval of the 9019, and then
22 pending approval of the Chapter 11 Plan. So, that segues
23 pretty well into withhold. We've had conversations with the
24 withhold holders. We, obviously, don't have an agreement
25 yet. We want to continue to talk and see if there's a

1 resolution of Phase 2 with respect to the withhold holders -
2 - say that ten times fast -- that could be beneficial to all
3 parties or, like Mr. Ortiz said, you know, just the right
4 amount of upset. If we're not able to reach that
5 resolution, we need to figure out what to do with Phase 2
6 with withhold, given that custody is no longer part of Phase
7 2. The Debtor's position is that, you know, Phase 2 was
8 premised on there being a ruling of the Court that custody
9 and withhold were not property of the estate because, of
10 course, there's only a preference if withhold is not
11 property of the estate. If withhold is property of the
12 estate, there's no preference, there's no transfer of the
13 Debtor's interest in property.

14 So, given that custody is out of the picture, if
15 we do go forward with the litigation and don't reach a
16 settlement with the withhold people, we think that there
17 needs to first be a determination of the Court as to the
18 Phase 1 issue with respect to withhold. Back in December,
19 Your Honor said, you know, "I hope that withhold goes
20 forward with Phase 2." That made all the sense in the
21 world. Phase 2 was going forward with respect to custody
22 anyways. But our position is that, if we're going forward
23 with just withhold, there's sort of a predicate issue, which
24 is the resolution of the Phase 1 issue that we argued in
25 December. So, that's the update on withhold from the

1 Debtor's perspective.

2 THE COURT: Just -- I'll turn to Ms. Kovsky in a
3 minute, but could you remind me whether the withhold assets
4 were co-mingled with all of the earned assets?

5 MR. KOENIG: They were, Your Honor. They were in
6 the same fire blocks' workspace.

7 THE COURT: Okay. All right. Ms. Kovsky?

8 MS. KOVSKY: Thank you, Your Honor. Deb Kovsky
9 for the Ad Hoc Group of Withhold Account Holders and the
10 other transferees. As Mr. Koenig said, I think something
11 will need to be figured out at some point with Phase 2,
12 perhaps not today. We have been in ongoing discussions. I
13 understand the Debtor's position that we need to go back and
14 revisit Phase 1. Your Honor may recall at the December 7
15 hearing, you pointed out, quite rightly, that the Debtors
16 have pretty much done a 180 on us and went from saying, "No,
17 withhold is absolutely not property of the estate", to
18 "Well, you know, we don't really know." And you had asked
19 me at that time whether I had all of the evidence in the
20 record that I would want given that change, and my answer
21 was no.

22 So, if we have to go back and revisit, then we
23 would need a full schedule for that or we can proceed -- the
24 reality is, Your Honor, the withhold group spent a great
25 deal of time and incurred a significant amount of expense

1 preparing for Phase 2 at Your Honor's request that we move
2 forward with Phase 2. We've gone pretty far down that road
3 and it would, I think, be detrimental to my client group to
4 be told, "Oh, actually, you know, we're not going to have a
5 Phase 2 because we first have to -- we have to do a
6 sequential process and do Phase 1 all over again first and
7 perhaps not get to Phase 2 and not get these issues
8 resolved", when we've already incurred so much expense
9 preparing for Phase 2.

10 THE COURT: Remind me --

11 MS. KOVSKY: That said though --

12 THE COURT: Remind me, Ms. Kovsky, what the
13 aggregate value of the withhold accounts are.

14 MS. KOVSKY: The entire universe, my understanding
15 is somewhere around \$15 million.

16 THE COURT: Okay.

17 MS. KOVSKY: And the Withhold Ad Hoc Group is
18 roughly, I think, a little more than 10 percent of that.

19 THE COURT: All right.

20 MS. KOVSKY: So that was a very long-winded way of
21 saying, Your Honor, that we're still talking and are
22 probably going to have to come back to you at a subsequent
23 date.

24 THE COURT: Okay. Mr. Mendelson, you have your
25 hand raised.

1 MR. MENDELSON: Yes, thank you again. It was just
2 mentioned that, you know, maybe tongue in cheek, that
3 custody is a non-issue or a dead issue at this point. It's
4 not a dead issue to me until I understand what the retail
5 claw back minimum threshold is going to be. And the estate
6 saying that they're going to claw back whatever financially
7 makes sense, I don't know if that's legally standing and
8 that's certainly not a definitive number for me to make my
9 decision as to whether I'm going to accept -- if Your Honor
10 accepts this Settlement Agreement. So, again, I just want
11 to reiterate, we need to know what the retail claw back
12 threshold is going to be, sooner rather than later, before
13 making any decisions about settlements. Thank you.

14 THE COURT: Thank you, Mr. Mendelson. Did anybody
15 else want to be heard? Mr. Iovine?

16 MR. IOVINE: Yes, Your Honor. Jason Iovine, pro
17 se creditor. Mine is just in reference to the assets sent
18 in after the petition date. Is there any resolution to
19 that?

20 THE COURT: People sending crypto in after the
21 filing?

22 MR. KOENIG: Your Honor, I can provide an update
23 there. So, at the last Omnibus Hearing --

24 THE COURT: You have to identify yourself on the
25 record, Mr. Koenig, please.

1 MR. KOENIG: Oh, I'm sorry. Again, Chris Koenig
2 for the Debtors. Thank you, Your Honor. At the last
3 Omnibus Hearing, we -- Your Honor entered an Order
4 authorizing us to re-open the withdrawals of the post-
5 petition deposits.

6 THE COURT: Right.

7 MR. KOENIG: We're in the process of doing that,
8 just like we're in the process of opening for custody. So,
9 there will be communications that go out. It's going to lag
10 a little bit behind the custody just because we've been
11 working on custody for so long. But we're working as hard
12 as we can to re-open withdrawals for those folks, as well.
13 The post-petition, sort of, the accidental deposits that
14 Your Honor authorized, we're working on that, as well. But
15 obviously we're trying to open deposits -- we're trying to
16 open withdrawals for both custody and the post-petition
17 folks, as well. But that's certainly continuing just along
18 with the custody withdrawals.

19 THE COURT: Thanks very much, Mr. Koenig. Anybody
20 else want to be heard? Ms. Kovsky, your hand is still
21 raised or raising a new --

22 MS. KOVSKY: Sorry. Raised new. I just wanted to
23 mention one other -- it's a minor issue, but I just did want
24 to flag it since it's part of the Status Conference. Part
25 of Your Honor's Order with respect to the release of certain

1 custody coins also included the release of certain withhold
2 coins. My understanding from the Debtors is that they are
3 working on it. They've run into some technological issues,
4 but my understanding is that this is something that is in
5 process.

6 THE COURT: Mr. Koenig, can you address that?

7 MR. KOENIG: Your Honor, Chris Koenig. Yes, I can
8 address it. It's proven more challenging than we had
9 initially thought to identify each and every one of the
10 withhold coins that's within the sort of, the very narrow
11 band that was authorized to be withdrawn. It was, sort of,
12 the "Oops, we sent coins that are not, you know, possible to
13 be, you know, deployed on the Celsius platform." Anybody
14 can create any coin on the Ethereum blockchain. I could
15 create a Koenig coin and send it in to Celsius and, you
16 know, laugh about it. Determining all of those individual
17 coins has proved more technologically challenging. We are
18 working on it, but I think we all expected that this was
19 going to be a much easier issue to finalize and we're still
20 working on it.

21 THE COURT: All right. Mr. Herrmann?

22 MR. HERRMANN: Yeah. Thank you, Your Honor.
23 Immanuel Herrmann, pro se Creditor. I just wanted to make a
24 quick point about claw backs. There's actually a pretty --
25 we don't totally agree all retail customers -- and of

1 course, there's so many, but actually, a lot of the earned
2 customers even don't think there should be retail claw backs
3 except at a high threshold. So, there might be some debate
4 about, should it be \$100,000, a million, whatever it is.
5 But it's not -- people don't really think small accounts
6 should be gone after and there's also --

7 THE COURT: It's not how the statute's drafted,
8 though, you know. I deal with the law, not -- you know, I
9 hope there's a resolution, Mr. Herrmann.

10 MR. HERRMANN: Okay. Yeah, me too.

11 THE COURT: Okay. Mr. --

12 MR. (indiscernible): Yeah. Jeff (indiscernible),
13 pro se creditor. I was wondering if Chris Koenig could
14 explain a little bit more about the second part of custody.
15 Are you talking about a settlement of, like, for pure
16 custody, let's say, that as an example, you're talking about
17 70 percent of the 6 percent that people won't be getting
18 back in the first installment?

19 MR. KOENIG: Again, Chris Koenig. You're asking
20 about how is the resolution of the 6 -- the prior Custody
21 Order allowed 94 percent of pure custody be withdrawn. Your
22 question is, how does this settlement impact the 6 percent?

23 MR. (indiscernible): Correct, yes.

24 MR. KOENIG: Yeah, that's a great question and
25 something we're still working on with the parties. We'll

1 announce it as part of the 9019 settlement.

2 MR. (indiscernible): Understood. Thank you.

3 MR. KOENIG: Thank you.

4 THE COURT: Thank you both, Mr. (indiscernible)
5 and Mr. Koenig. All right. Mr. Koenig, I think we've
6 finished everything on the agenda, haven't we?

7 MR. KOENIG: Your Honor, I think that's -- I think
8 that's right. There was a Stone adversary -- a stone
9 adversary status conference and I believe one other status
10 conference, as well. But we've gone through the main
11 portion of the case, for sure.

12 THE COURT: All right. Mr. Hurley?

13 MR. HURLEY: Thank you, Your Honor.

14 THE COURT: This is in connection with the Stone
15 adversary proceeding.

16 MR. HURLEY: Good afternoon, Your Honor. Mitch
17 Hurley with Akin Gump. I'm just looking for Mr. --

18 THE COURT: His name is Mr. Roche. He's on my
19 screen.

20 MR. ROCHE: Good afternoon, Your Honor.

21 THE COURT: Okay.

22 MR. HURLEY: Oh, there he is. Would you like me
23 to go ahead, Your Honor?

24 THE COURT: Yes, I would.

25 MR. HURLEY: Okay. Again, Your Honor, Mitch

1 Hurley with Akin Gump on behalf of the Celsius Plaintiffs.
2 Your Honor, first I just wanted to thank the Court again for
3 the time that it devoted to hearing the Objection Motion
4 last month and the Evidentiary Hearing that the parties
5 participated in and for entering the TRO yesterday. We
6 think that this is a really important step, including the
7 entry of the TRO, both from the perspective of the
8 protection of creditors and from the perspective of giving
9 these parties some breathing room to consider whether a
10 settlement may be possible. So, the TRO, of course, is now
11 in effect. It will remain in effect until further Order of
12 the Court and we have had some discussions since our last
13 conference with Your Honor about a potential path for
14 settlement. And I want to come back to that in a moment.

15 First, I just want to bring the Court up to speed,
16 at least on where the parties are in terms of discovery and
17 scheduling. So, we and counsel for the Defendants have
18 conferred on multiple occasions, including very recently,
19 concerning the progress of discovery and the current case
20 management and Scheduling Order. Your Honor may recall that
21 that Order calls for fact discovery to be finished by March
22 10th, expert discovery to be finished by May 24th and a pre-
23 trial Order filed by June 23rd. So, in discovery, I think
24 both parties agree that substantial progress has been made,
25 but more work remains. Certainly, the litigation related to

1 the TRO and injunction was time consuming and I think we
2 also agree that some additional time will be required to
3 complete discovery as compared to what's on the schedule
4 now. There's some additional document production that's due
5 from both sides. We expect the Court may be called on if
6 discovery resumes, to resolve some document-related
7 disputes, and there would be depositions and, of course,
8 expert discovery.

9 As I noted though, since our last conference with
10 Your Honor, the parties had some preliminary discussions
11 about a potential settlement. The discussions have been
12 productive in that the parties appear, again, very
13 preliminarily, to at least be in the same ballpark about the
14 kind of process that might make sense for the parties to
15 engage in to try to get to a settlement. If the parties
16 were able to agree on a process, then we think it's likely
17 that we would come back to you jointly soon, to ask for both
18 a modest extension of some of the deadlines in the existing
19 schedule, and also for a stay of the litigation and those
20 deadlines to provide the parties some time to try to work
21 through their process to see if we can get to a settlement.

22 If the parties can't agree on a process, we will
23 also advise the Court promptly, including in connection with
24 scheduling. Either way, our objective, and I think it's one
25 shared by the Plaintiffs -- sorry, by the Defendants, is to

1 come back to the Court next week, hopefully by the middle of
2 next week. We are hopeful, at this point, that we're going
3 to come back with a request for a stay in addition to the
4 modification of the schedule. But those discussions, as I
5 said, are very preliminary so we've got to continue working
6 on it.

7 THE COURT: All right.

8 MR. HURLEY: (indiscernible)

9 THE COURT: I'm sorry, go ahead, Mr. Hurley.
10 Anything else you want to add, Mr. Hurley?

11 MR. HURLEY: No, Your Honor.

12 THE COURT: Okay. Mr. Roche?

13 MR. ROCHE: I think Mr. Hurley has covered it. We
14 spoke -- we've spoken a couple of times this week and I
15 agree with Mr. Hurley's characterization of the
16 conversations. We're hopeful we can get a joint submission
17 to Your Honor by mid-next week. That would include a stay
18 for reasons Your Honor pointed out, in closing arguments at
19 the TRO hearing or, excuse me, at the Preliminary Injunction
20 hearing, just getting a process in place on how the parties
21 can make sure there's transparency around -- on both sides
22 around the accounting because that will, obviously, have
23 impact on the discussions regarding the settlement.

24 THE COURT: All right. Thank you, Mr. Roche.

25 Keep me advised, Mr. Hurley and Mr. Roche and I hope you're

1 able to move toward the settlement. Okay.

2 MR. ROCHE: Understood, Your Honor. Thank you.

3 THE COURT: All right. So, there were two other
4 adversary proceedings that were on the calendar for status
5 conferences. First, Frishberg v. Celsius Ne5twork,
6 adversary proceeding 22-01179 and Shanks v. Celsius Network,
7 adversary proceeding 22-01190. There are issues that --
8 there's an issue in each of those that have to be resolved,
9 I think, before the -- they're ripe for a status conference.
10 So, I see Mr. Shanks' hand has been raised and Mr.
11 Frishberg's hand has been raised. I'll -- Mr. Shanks, I'll
12 hear you briefly, but I don't want to get into the details
13 of what the issue is. I think that has to be resolved
14 before those cases are ripe to go forward. But Mr. Shanks,
15 if you want to be heard, go ahead.

16 MR. SHANKS: Yes. Fred Shanks, pro se. Your
17 Honor, I understand exactly what you're saying, and I
18 appreciate what you're saying. I would like to bring to the
19 Court's attention that Celsius and their lack of proper
20 documentation. And a good example is, I received 1099
21 Miscellaneous Forms, which there's a severe discrepancy in
22 regards to what's being reported to the IRS, to include the
23 1099-B. I have reached out to Celsius on a number of
24 occasions. I have it documented via email, and I've
25 received absolutely no response back. This is, again, my --

1 you know, the fundamental basis of why we're here today is
2 their lack of proper documentation. So, I would just like
3 to bring that to the Court's attention. And if we need to,
4 you know, in regards to the case itself, what it is that
5 needs to be resolved, I am available. And I have reached
6 out to the Defendant's law firm on a number of occasions.

7 THE COURT: All right. Let me see, Mr. Latona, I
8 see you on the screen. I don't see any of your colleagues.
9 Can you or one of your colleagues find someone who can reach
10 out to Mr. Shanks and see if we can avoid the necessity of
11 going forward with an adversary proceeding. Perhaps there's
12 another resolution that can be reached. So, you have the
13 misfortune, perhaps, Mr. Latona, of being the one I can see
14 on the screen. So, I'm asking if you would do that, if you
15 would reach out to Mr. Shanks and see whether --

16 MR. LATONA: Yes, Your Honor.

17 THE COURT: -- you can get him the information
18 he's looking for. Okay?

19 MR. LATONA: Yes. Good morning, Your Honor. Dan
20 Latona of Kirkland & Ellis on behalf of the Debtors. I'll
21 happily take on that burden. We have been in contact with
22 Mr. Shanks. We understand his concerns regarding the 1099.
23 We'll work with the Debtors to make sure he gets the
24 information that he needs. Regarding the adversary
25 proceeding, as it stands right now, the Debtors and Mr.

1 Shanks agreed to a stipulation which states discovery
2 pending the Debtor's responsive pleading, which due on
3 February 22nd.

4 THE COURT: That's fine. Okay.

5 MR. LATONA: And then, Your Honor, with respect to
6 Mr. Frishberg's adversary --

7 THE COURT: Yeah, and that's -- that's AP 22-
8 01179. Let me hear from Mr. Frishberg first before I hear
9 from you, Mr. Latona. Go ahead, Mr. Frishberg.

10 MR. FRISHBERG: Your Honor, I was just going to
11 say, like it was -- like Mr. Latona was going to say, the
12 matter has been adjourned for today.

13 THE COURT: Okay. Yes, it has. It is adjourned
14 and I think my Chambers have been communicating with you,
15 Mr. Frishberg.

16 MR. FRISHBERG: Yes, Your Honor.

17 THE COURT: We're trying to resolve one issue. I
18 don't see any reason to get into that on the record today.
19 Okay?

20 MR. FRISHBERG: I understand. I (indiscernible)
21 and I plan to address it shortly with action.

22 THE COURT: That's fine. Okay. Mr. Latona, did
23 you want to address it?

24 MR. LATONA: No, Your Honor.

25 THE COURT: Okay. All right. By my reckoning,

1 that does take care of the agenda for today.

2 MR. LATONA: Thank you, Your Honor.

3 THE COURT: Thank you all and see you in March.

4 MR. KOENIG: Thank you for your time, Your Honor.

5 THE COURT: Let's hope for more progress, okay?

6 Thank you very much.

7 MR. KOENIG: We look forward to it. Thank you.

8 THE COURT: We're adjourned.

9 (Whereupon these proceedings were concluded at
10 12:45 PM)

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I N D E X

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: February 16, 2023